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NATIONAL ARCHIVES OF INDIA

CELEBRATED TRIALS

IN

INDIA,

78668

COMPILED BY

J. GHOSAL.

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VOL. I.

Bhowanipore:

PRINTED AND PUBLISHED BY M. BANERJEE.

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1902.

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NATIONAL ARCHIVES OF INDIA

PREFACE.

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Accounts of Celebrated Trials are not only of considerable use to the student of history and law, but are also a constant subject of fascination and interest to the general public. No apology is therefore needed for the publication of a compilation containing, as it does, a mass of interesting information regarding some of the most celebrated State and private trials of the past. The materials have been collected from works extremely rare and out of print, and from files of old newspapers. The task has been one of some difficulty. The climate of this country and the ravages of insects are not favourable to the preservation of documents. Original records, even when they are not more than twenty or thirty years old, are not easily available. The reader will readily understand how difficult it is to obtain authentic and original records relating to trials which took place more than a century ago, and how necessary it is to preserve, by a work like this, the materials which are still in existence. If once lost, as they are sure to be lost within a few years, they would be lost for ever.

The present series opens with a connected history of the Indigo agitation which is intimately associated with the memorable name of Hurrish Chunder Mookerjee, and which has won for the Rev. J. Long, the grateful admiration of the Bengalee nation. The account contains, among other things, the Report of the Indigo Commission and the evidence of important witnesses examined by it. No fewer than 134 witnesses were examined by the Commissioners, but, having regard to the size of this volume, I have been obliged to select the evidence of only four out of this large number, for inclusion in this compilation, these four being the representatives of the different important communities from which the witnesses were called, namely, the Hon'ble (afterwards, Sir,) Ashley Eden, representing the official European community; the Rev. Long, as representative of the disinterested non-official European community, Mr Archibald Hill, as representing the Indigo planters of Bengal, and Babu Hurrish Chunder Mookerjee, as representative of the Indian educated community of the time. One of the off-shoots of the Indigo

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agitation was a plentiful crop of cases for libel brought in the interest of the Indigo planters of Bengal. A suit for defamation was brought in the Supreme Court against Sir John Peter Grant, the Lieutenant-Governor, who had exposed the iniquities of the Indigo planters in an official Minute which was as closely reasoned as it was outspoken. The Rev. Mr. Long, who had translated the famous Bengali drama, the *Nildarpan*, into English, was similarly prosecuted for libel, while Babu Hurrish Chunder Mukerjee was proceeded against both civilly and criminally. Full accounts of these cases will be found in the present series. Among State trials of a historical and political interest, will be found the trial of Maharaja Nundo Kumar, the impeachment of Warren Hastings; the Wahabi case, and the case of Mulhar Rao Gaikwar. The trial of that Brahmin statesman, Maharaja Nundo Kumar, who had more than once filled the office of Prime Minister, for forgery, is a matter which has aroused much controversy, and of late many volumes have been published both by Indians and retired Anglo-Indian high officials vindicating Nund Kumar's character. Readers of the account, given in this book, will find ample materials, not only to form their own opinions on the controversy in question, but also to get a glimpse of the political moral and social conditions of those days.

The Wahabi case is among the most sensational political trials of the latter part of the last century. Apart from the constitutional questions involved in this case, its interest has been heightened by the brilliant advocacy of Mr. Anstey, counsel for the accused.

In the Baroda case, Mulhar Rao Gaikwar, was tried by a Commission composed of his peers on a charge of attempting to poison the British Resident at his Court. This case aroused much public interest, and has been the theme of many a Bengali tale.

The reader will also find in this volume an account of the trial of the false Pratap Chand, the unsuccessful claimant for the Burdwan *Raj*. This case resembles the Tich-borne case, not only in its nature, but also in the powerful hold it had on public sentiment. It may be mentioned here that all the accounts of this trial, which have yet appeared in English or Bengalee, are based upon a pamphlet which was published at the time by one Mr. Shaw. Until I came to know who Mr. Shaw was, I, too, had no reason to suspect that any of his statements was open to any doubt. He was the attorney employed by the claimant, took much trouble for him, underwent many hardships on his account,

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including his detention in the district jail for more than six months and he naturally became prejudiced and attempted to present the case in a light most favourable to his client. I have therefore thought it neeessary to consult other authorities and sources of information, instead of blindly following an authority, the trustworthiness of whose testimony is somewhat discounted by his partizanship.

Under the heading of trials of a recent date, will be found full and complete reports of the *Bangabasi* sedition case, and the prosecution of Mr. Bal Gangadhar Tilak.

It was originally my intention to include in the present series, the case of Mr. Surendra Nath Banerjee and the trial of Mr. Taylor, for contempt of Court, as well as certain other cases of public interest, for which, the necessary materials have already been collected. But I have, after mature consideration, decided not to add to the bulk of this volume. Should it be fortunate in meeting with a favourable reception, it would be my endeavour to bring out its successors so as to form a complete record of considerable historical value and interest.

It now remains for me, in conclusion, to record my grateful acknowledgments to Raja Peary Mohun Mookerjee, C S.I., for having kindly lent me the use of certain old books, which are out of print, out of the rare collections contained in the Uttarpara Public Library.

In connection with the Pseudo Burdwan *Raj* case, came the trial of J. B. Ogilvy, Magistrate of Burdwan. An account of this trial is given at the end of this case.

April 1902. J. GHOSAL.

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CELEBRATED

TRIALS

IN INDIA.

INDIGO COMMISSION.

APPOINTED UNDER ACT XI OF 1860.

MINUTE BY THE PRESIDENT,

CONCURRED IN BY MR. SALE AND BABOO C. M. CHATTERJEE.

OUR remarks on our Colleague Mr. Fergusson's Minute will be very brief, and are only designed to prevent misunderstanding.

As regards the remarks of our Colleague "on the language and tone" of the Report, which "tend to give a coloring and lead to conclusions not proved from the facts," we have only to say that the mass of evidence has been by us carefully analyzed and impartially weighed. No conclusion is drawn which is not based on good evidence, and we must leave the Government and the public to judge whether the conclusions, so supported, do not justify the *tone* of the Report. As regards our Colleague's remarks on the Permanent Settlement, we emphatically disclaim any intention of disturbing or impugning the acknowledged principles of that great measure. Our views as to the relative position of ryot and zemindar are, we submit, borne out by the Statute Law, and by the common custom of the country; moreover, in discussing the merits of Act X of 1859, we have thought it necessary, *in the interest of the zemindars*, to solicit the attention of Government to two of its most important Sections, and we have suggested nothing to the ryot incompatible with his real position, or with the zemindar's rights.

W. S. SETON-KARR, C.S.
J. SALE.
C. M. CHATTERJEE.

CALCUTTA,
The 27th August 1860.

I have not any remarks to offer on the subject.

R. TEMPLE.

The 27th August 1860.

MINUTE BY MR. FERGUSSON.

I DISSENT from the Report adopted by my Colleagues for reasons stated below. I have joined with Mr. Temple * in a Minute recommending the measures which we deem advisable and necessary to ward off the calamity, in which I apprehend not only indigo planting but the whole agricultural and landed interests of Lower Bengal are likely to be involved, unless measures are promptly taken to put a stop to the delusions and excitement under which the people are now laboring.

My reasons for dissenting from the Report are—

That it leads to the inference that Planters as a body are lawless, the evidence affecting only some out of a number.

That although I admit there has been

* *See* Indigo Commission Report. P. 48.

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no general bias against planters on the part of the Officials, yet particular instances of undue interference have been shown which, operating on the minds of an ignorant peasantry, have been most detrimental to the planter, particularly in the present season.

The recent crisis, though accelerated by an unfounded belief on the part of the ryot that the Government was opposed to the cultivation of indigo, must have sooner or later occurred owing to the disturbance which has taken place on the relative returns to the ryot from indigo as compared with cereals and other cultivation, and the Planters would have done well had they paid earlier attention to the above facts and met the ryot with a more proportionate remuneration. The same remark applies to the cultivation of opium and the manufacture of salt.

The Report finds generally the inexpediency of appointing European gentlemen resident in the Mofussil as Honorary Magistrates, whereas I think the inexpediency should be limited simply until such time as the question between indigo planter and ryot is put on a more satisfactory footing. When this is done, in my opinion, not only should Europeans but also Native gentlemen be appointed Justices of the Peace, with a jurisdiction limited as in England.

I further dissent from the language and tone of the Report even as to those points the truth of which I do not dispute, for the reason that the language and tone tend to give a coloring, and to lead to conclusions not proved from the facts.

I would especially refer to the views in the Report as to the relative position of ryot and zemindar as tending to disturb the acknowledged principles of the Permanent Settlement, and to suggest to the ryot notions of rights incompatible with his real position and with the contract, made by that Settlement, between zemindar and Government. This, in my opinion, may lead to disturbances, the extent and consequences of which cannot be foreseen.

For these reasons I have deemed it my duty to dissent from the Report, and to record my views thereon.

W. F. FERGUSSON.

CALCUTTA,
The 25th August 1860.

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NOTE.—The total number of witnesses appears greater than that mentioned in the Report. The explanation of this apparent discrepancy is, that when the examination of any witness was resumed after an interval of some days, such a witness, in this list, has been reckoned twice over. The actual number of witnesses examined is 134.

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MINUTES OF EVIDENCE

TAKEN BEFORE

THE INDIGO COMMISSION.

Monday 30th July 1860.

Present.
W. S. Seton-Karr, Esq., c.s. President.
Members.
W. F. Fergusson Esq. | *Reverend J. Sale.*
Baboo Chunder Mohan Chatterjee.

The Report of the Evidence given being Voluminous, the Evidence given by four gentlemen representing the Government, the Indigo Planter, the Missionaries and the Press is appended below :—

Baboo Hurish Chunder Mookerjee, of Bhowanipore, in the district of 24-Pergunnahs called in and examined on oath.

3868. *President.*]. What situation do you hold ?—I am a clerk in the service of Government in the Military Auditor General's Office.

3869. You are the Editor of the *Hindoo Patriot* ?—I do not hold myself the responsible editor of the paper, but I have sufficient influence with the Proprietor to make him adopt any tone of policy I deem fit.

3870. You have had occasion to watch with interest the late Indigo crisis, have you not ?—Yes.

3871. During the crisis, have any ryots, or other parties applied to you for advice ?—Yes, numerous persons, Zemindars, middle men, and ryots, have come to me for advice from several districts. They applied to me personally.

3872. Will you state the questions on which they generally came to seek your advice ?—Before the Act for the summary enforcement of Indigo cultivation was passed, the point on which the majority of ryots sought my advice was, how they could best avoid sowing; after the Act was passed the point on which they chiefly sought my advice, was how they could best resist the coercionary measures taken under it. Latterly, the point that they have generally sought my advice on is, how best they can avoid taking advances, and being made to grow Indigo next year. Besides these there have been particular cases in which I have assisted them with advice and written out petitions and applications to various authorities.

3873. Can you state the general line of advice that you gave to the ryots in the points above referred to ?—I invariably advised them to apply to the district authorities in the proper form for redress, and to go to the next appellate authority, if they found no redress at the hands of the district authorities. I cautioned them against ever committing any breaches of the peace, or committing themselves in any manner by acting illegally. I explained to them that the operation of the Act was temporary, and that better measures would be devised next year, when I was sure they would be free to take or not to take advances. I generally advised them to seek for redress in the Civil Courts, a mode of pro-

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ceeding which I found was much less resorted to, than it should have been. I mean the Act for damages.

3874. As editor of a paper published in English, and therefore likely to be read by Englishmen, had you many communications by letter from parties in the Mofussil detailing their grievances, and asking for your advice?—All letters addressed to the editor of the *Patriot* were received and opened by me, and many of them contained statements of the kind referred to in the question.

3875. Are you in a position to state whether more letters of the kind would be likely to come to you, than would be likely to come to a paper printed in the vernacular, say the *Bhashkar*?—The probability is, that more letters of the kind were addressed to the Editor of the *Hindoo Patriot* than to the editor of any vernacular journal.

3876. Have you at any time visited any of the great Indigo districts yourself, for instance Jessore, Kishnaghur, or Moorshedabad, and are you personally known to many residents of those districts?—No, I have never visited any Indigo district, except Baraset and Hooghly. I am personally known to many inhabitants of the Nuddea district, and to some of Rajshahye, and to some of Mymensing, having made their acquaintance in Bhowanipore.

3877. During the late Indigo crisis have you had occasion to depute any person or persons into the interior, in search of accurate information regarding the state of the districts?—Not especially for the purpose of news. I have recommended legal agents to the ryots to carry on these cases, who have acted as correspondents of the *Hindoo Patriot* then; I have received accurate information from time to time respecting every proceeding or occurrence of any note, from persons in the district.

3878. Mr. *Fergusson.*] But did you send from this the legal agents whom you recommended the ryots to employ?—The ryots took them up from here. I settled for one of them the terms on which they were to act as *mooktyar*. This was at a time, when I was told that no *mooktyar* in the district of Kishnaghur, except in the Sudder Station, could be induced to take up a ryot's case, in consequence of a *mooktyar*, Jitu Chatterjee, practising in the Damurhuda sub-division, having been imprisoned on an alleged charge of having instigated the ryots.

3879. *President.*] Then you can distinctly state that you never deputed emissaries with directions to go from *Thannah* to *Thannah*, or village to village, pointing out to the ryots the line they ought to take?—I distinctly deny having done so, and thank the Commission for having given me this opportunity of making this denial.

3880. Mr. *Sale.*] Can you state how many of these legal agents went from Calcutta to the Indigo districts with your knowledge, to what district they went, and what was the nature of the understanding you had with them, previous to their going?—Three in all, to the Nuddea district only. The understanding was, that they should act as *mooktyars* for the ryots who should pay them.

3881. Mr. *Fergusson.*] Did you prepare or assist in preparing circular notices respecting Indigo, which were said to be distributed in the villages of Kishnaghur?—I know nothing of them, nor have I ever seen them.

3882. Mr. *Sale.*] You have stated that after the passing of the summary Act, some of the ryots asked you how they could best resist the coercionary measures taken under it; did they wish to know how they could resist the operation of the Act itself, or did they desire to resist the coercionary measures taken under color of that act?—The ryots wished to know how they could resist the operation of the Act generally. I could only advise them how to resist the fearful amount of oppression committed under cover of that Act, by officials as well as Planters.

3883. What kind of oppression do

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you refer to?—Imprisonment in large numbers in low, filthy, narrow godowns, breaking into houses, plunder of property, insult of women by officers of Police of various grades, instigated by Planters.

3884. Mr. *Fergusson.*] Do you believe that these things have been done under Act XI. of 1860?—I do, after having made enquiries of every kind in my power, as to the fact of imprisonment; it has been judicially established that cases of the kind did occur.

3885. *President.*] Are you aware that since the passing of the Act, the Government of Bengal has exercised close supervision over the local authorities in order to prevent injustice or oppression being perpetrated under its color?—For the first two or three months after the passing of the Act, the supervision of the Government of Bengal was not such as to prevent the provisions of the Act being extensively abused. Since then a closer supervision prevails.

3886. Baboo *C. M. Chatterjee.*] It has been stated by Mr. Larmour before the Commission, that there has been a feeling of jealousy between the Members of the British Indian Association and Indigo Planters on account of some of the Members of the latter being vested with the powers of Honorary Magistrate by the late Lieutenant-Governor Mr. Halliday, now Sir Frederick. As a Member of the British Indian Association, do you wish to say anything?—Mr. Larmour's statement is not strictly correct. The Association is composed of Members of varied politics. Some of them are friendly towards the Planters, others are hostile towards them. The Association did address the Lieutenant-Governor on the inexpediency of the appointments at the time they were made, and I beg to file a copy of the Association's address on the subject dated 29th August, 1857.

3887. *President.*] During the late discussions on Indigo, have you thought it your duty to form and to express a clear opinion on the several questions at issue, as affecting the welfare of a large portion of the native population?—I have studied the question with care, and have no doubt in stating that the present system of Indigo cultivation is injurious to the ryots in every way; on all points arising out of these discussions, I have formed definite opinions which I have taken every opportunity to express. On one point only I have not been able to form an opinion, *viz.* what are to be the future relations between ryot and Planter.

Tuesday, 12th June 1860.

Revd. James Long, of Calcutta, Missionary of the Church Missionary Society, called in and examined on oath.

1625. *President.*] Will you state to the Commission, what opportunities you have had of ascertaining the feelings and habits of the lower orders, both in districts where indigo is cultivated and in districts where it is not?—I have not lived in indigo districts, though I have visited many; and have received much information on the subject of the indigo *ryotti* system from indigo planters and others; my two main sources of information have been, mixing much with natives of all classes, both in Calcutta, and in the villages, some of whose interests are mixed up with indigo cultivation; as also from having been a regular reader for the last sixteen years of the vernacular newspapers and periodicals, which constantly treat of the subject of indigo cultivation. The subject has been forced on my attention in connection with the questions of the education of the masses, and of the creation of a body of intelligent peasantry, in enquiries into the effect of English influence in attaching natives to the Government, and setting a Christian example; Missionary preachers, even in Calcutta, are sometimes met with a remark. "Why do you not tell your

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coutrymen, the indigo planters, to be less oppressive; go, preach to them first." And I have frequently heard even boys in Missionary schools say. "Why are your Christian countrymen as bad as we are, and yet you say, your religion is better than ours."

1626. In your reading in connection with the vernacular press and your conversation with all classes, have you noticed many facts, which might lead you to think that the lower orders of Bengalees have lately adopted more independent habits of thought?—Yes; I have seen it very much of late in connection with the rise of prices, and the increased value of labour, thus enabling the natives to be, to a certain extent, independent of the Europeans; and I believe, it has had much to do with the immediate causes of the opposition to indigo planting; It will not cease here, but will, I believe, have a very important social influence on the mass of the people, freeing them from a slavish feeling, and showing them that they can in various cases, declare terms to the Europeans. The mutiny has also roused the native mind, and has made the people feel that they have some power. I would mention one illustration of the effect of the rise of prices that is now felt, namely the difficulty experienced for some time in the Kishnaghur district in getting boats at a reasonable rate of hire to come to Calcutta; many boatmen have abandoned this occupation and have devoted themselves to labour, which gives them a higher rate of wages; such as on Railway embankments, which is paid at a very high rate.

But my own enquiries and duties have brought two causes prominently to my notice, as conducting to independence of mind among the masses; first, English education, happily spreading in the country among the natives, is giving them a sense of freedom, leavening their minds with a regard to a sense of justice, and imparting to them an English tone of revulsion against oppression. It is also welding the natives of the different Presidencies into one patriotic mass, with a community of feeling on Indian subjects. Thus a native of Calcutta, on a recent visit to Bombay, was enabled to address numbers of Parsees and Guzeraties in English; though they knew nothing of each other's vernacular. A pamphlet was published by a native in the city, sometime ago, in English, and was reprinted by his countrymen in Madras and circulated widely. Madras and Bombay, like Calcutta, have newspapers in English, conducted by natives, and advocating the views of educated natives.

This influence is radiating downwards. The substance of those newspapers and pamphlets in English are being communicated orally, or by means of translations to the masses of the people.

The vernacular press is rising into great importance, as a genuine exponent of native opinion, and it is to be regretted that the European community pay so little regard to its admonitions and warnings. It is the index of the native mind. In 1853, I visited Delhi, Agra, and Lucknow, and particularly examined the statistics connected with the Vernacular press, in the Upper Provinces, and I remember the impression with which I left Delhi, after I had been through its lanes and gullies, exploring the localities of its Vernacular presses. I felt then very strongly, how little the Europeans of Delhi and other cities were aware of the prodigious activity of the Vernacular periodical press, and the impression it was evidently producing on the native mind as tested by the avidity with which books, treating on native and political subjects, were purchased.

The progress of the Vernacular press in Calcutta may be thus shown:—

Works printed for *sale*, were.—

In 1826	8,000	Copies.
In 1853	300,000	
In 1857	600,000	

Social questions occupy much of the attention of the Vernacular press; thus the controversy on widow marriage gave

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rise to twenty-five different publications in Bengali. The subjects of early marriage and female education have also been amply discussed. The Agri-horticultural Society of Calcutta has deemed it worth its while to publish a volume on agricultural subjects for the ryots. A native, under the soubriquet of a "Tekchund," with the wit of a *Dickens* or a *Moliere*, has exposed the evils of spirit drinking, female ignorance, and Young-Bengalism, among his countrymen, and his works have met with a large circulation. Next, Bengali newspapers, such as the *Bhaskar* and *Probhakur* are circulated widely even as far as the Punjab, for wherever Bengalis go, (the Bengali, like the Jew, is a wanderer, and is to be met with in every part of Northern India,) they keep up a correspondence with each other in their own language and read their native papers. Thus on a visit to Benares, three years ago, I was in a part, called the Bengali-tolla, inhabited almost entirely by Bengalis, who used the Bengali language. Two Bengali newspapers were printed there. These Bengali newspapers have mofussil correspondents, who gave them the news of the districts, and to each Bengali newspaper is attached a translator of English newspapers; hence the native mind is much more familiarized with political movements both in Europe and India, than the Anglo-Indian commonly imagines. I take up the *Bhaskur* of last Thursday as a specimen of what is ordinarily given in a Bengali newspaper: there is an editorial on the Income Tax, in which the policies of Lord Aucland, Lord William Bentinck, Lord Hardinge, Lord Dalhousie, and Runjeet Sing are reviewed; then an editorial on Lord Clyde's leaving India; then an article on Sir Charles Trevelyan and on the Raja of Burdwan; then news about China, and about the Indigo Commission; the price currents, Assam steamers, Sir George Clerk, Gwalior, Oude, and Lady Canning. A Bengali paper is also published in the remote district of Rungpore; the last number, for instance, contains offers of prizes for Vernacular essays; an editorial on the Moslem rule; the Rajah of Kooch Behar's movements; the Indigo Commission, and an article on gas.

The amlas of the courts, the state of the police, the character of magistrates are constant subjects of criticism in those papers. I remember reading sixteen years ago, a series of powerful articles in the *Bhaskar*, exposing with the most caustic wit, the abuses of the courts.

Now, to my certain knowledge, indigo planting has been for the last sixteen years the subject of incessant attacks in those native newspapers, and the opinion of those papers filters down to the mass. News is spread among natives through channels which Europeans know little of. Thus at the period of the mutiny, the bazaar had often anticipated the Government, in political information. I beg to hand in in illustration, a translation from the *Som Prakash*, of May 21st 1860, an able weekly journal published in Calcutta, of an article headed, "the sense of religion of the Indigo Planters." In this and other papers, which I hand in, I do not hold myself responsible for the opinions, but merely give them in as an expression of native opinion. I also submit a translation of the "Native Friend of India, Bharut Bundhu."

Another source of ascertaining native opinion, are popular songs; songs have a powerful effect among Bengalis, and are used for religious and other purposes, with great success, justifying the remark of Burke, "give me the making of the ballads of a nation and I will give you the making of the laws." I beg to submit a pamphlet published in Bengali and widely circulated, called "The oppressions of the indigo planters; it contains songs which have been sung far and wide among natives and set to music. The drift of some of those songs is the following: that the interest on the planter's advances accumulates for three generations; that though the

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people sell their *pottas* (leases) they do not cross the Ganges, *i.e.* get free from the planter; that when the planter first applies to the ryot to sow indigo, he comes like a beggar, but at last he makes grass to grow on the ryot's bones; the indigo planters come in like a needle, but go out like a plough share, and are desolating Bengal like flocks of locusts; the King looks on while the subjects are drowned; all is gone; to whom shall we apply but to Almighty God; should we shut our eyes at night, we see the white face before us, and through fear, our lives fly away like a bird; our souls are burning in the strongflames of pain, (translation and original handed in). Another source of ascertaining native opinion, are native meetings. The Hindoos are fond of dramatic exhibition or *jatras*, which abound in wit and ridicule. In these the evils of *Kulin* polygamy are held up to contempt; nor do the defects of Europeans escape attention. A friend of mine was present at one of these meetings some two years ago, when the European was brought forward for ridicule with his slang terms of "cursed nigger," "stupid ass." Indigo planting is also occasionally the subject of ridicule in these meetings.

I can assure the Commissioners, that no language can depict the burning indignation, with which indigo planting is and has been regarded by the native population. It alarms me seriously for the furture peace of India, unless an equitable adjustment of the question is made.

Some how or another a feeling is arising in rural districts and spreading through the country, that the Government and officials wink at a system of oppression on the part of planters, more ruthless, the natives say, than any in *Moslem* times. In connection with this the notion has long been established in the North-West Provinces but is now spreading in rural districts in Bengal, that the French and Russians are anxious to get a footing in India, and of late natives have repeatedly said, how can we be worse under any foreign Government; they see the Magistrates and Deputy Magistrates, when sent to adjudicate disputes between the ryots and the planters, becoming in various cases the guests of the planter while the case is pending; nor is this feeling against indigo planting confined to the natives of Bengal, or to the lower orders. Various educated natives are aware that the French press has brought forward the indigo planting system as a blot on English administration. I myself, at the beginning of the mutiny, read a pamphlet published by one of the courtiers of the king of Oude, in which he argues that the indigo planting oppression is as great in Bengal, as any system of oppression that has been alleged to be practised by the king of Oude; and that if the king of Oude is to be deprived of his kingdom, on account of the oppression practised in his territories, the English Government ought also to be deprived of Bengal, on account of the indigo and other oppressions they wink at.

Feelings existing among the people in Bengal, can be orally communicated to the people speaking the Hindi and Maharatta languages, cognate tongues, I found, myself while at Benares, that I could make myself soon understood by the Hindi speaking population, in consequence of the affinity of the languages.

1627. Do you consider, that the newspapers and pamphlets to which you allude, have any circulation in the indigo distrits, or say, beyond thirty miles from Calcutta?—Of late years they have had; I calculate that though native papers have a limited numerical circulation in the Mofussil, yet each paper is probably read by from five to ten natives, and the information in it is orally communicated to a far wider sphere. There are hundreds of Bengali book-hawkers employed, who gain their livelihood by selling books, pamphlets, and almanacs, in various districts. I myself have sent a book-hawker out for the sale of useful Bengali works in the Hoogly District, and was surprised at the success he met

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with. In one case the natives had subscribed for a Barrowari Pooja, but on my sending them useful works, they appropriated one half of the money collected for the pooja to the purchase of these works.

1628. Mr. *Sale.*] You have stated that a Bengali paper would be read by five or ten persons; should a number of the *Bhaskur* go into a zemindary cutcherry, do you not think it would be read by a much larger number?—Yes; and in such cases it is the practice of Hindoos to have one person at night to read to a large number; and the power of communicating information orally, is a well paid profession among a class of Hindoos called *Kathaks*. I have been present at an assembly where three hundred males, and more than one hundred females behind the *purdah*, were listening to an eloquent discourse in Bengali by a *Kathak* for one hour and a half; and during that time, the attention was so profound, that the dropping of a pice could be heard.

Nor are the popular songs of Bengalis sung at these assemblies always confined to subjects of love and religion, they occasionally touch on politics; for instance, on the appointment of indigo planters as honorary magistrates, strong feelings of indignation were excited among natives, but specially among ryots. A common remark was, *je rakhak se bhakhak*, the man appointed our protector is our devourer, or, in the language of English speaking natives, the wolf is appointed the guardian of the flock; this remark was made to me frequently; those feelings found vent in song. I heard one of these songs, condemnatory of planters as magistrates, set to music, and sung with enthusiasm by a band of native singers in the Kishnaghur district, (translation put in) I have mislaid the original.

1629. *President.*] Are we to understand then, that from the Vernacular publications you have been in the habit of perusing, as well as from conversation you have held with natives, the dislike to Indigo Cultivation is not of recent origin?—To my certain knowledge, the Vernacular press has, for 16 years at least, been assailing the evils lately expressed by the ryots. In a visit I made to Kishnaghur in 1842, I found the same complaints as are now made; and in a correspondence I had in 1844, with a Kishnaghur Missionary, the same objections as others lately brought forward, were then urged by him.

1630. Do you recollect the precise nature of those complaints?—Such as, the ryot is caught in the planter's net, and from 20 beeghas, even in a good season, the ryot could not make more than 15 ; he then becomes plunged into debt, and eventually becomes a perfect slave to the indigo planter, not being able to liquidate his debts."

1631. But, in your visit in 1844, do you recollect any precise complaints being made to you, not by third parties, but by the ryots themselves?—I was not then sufficiently acquainted with the language to get direct information from the ryot; but I heard only one opinion, which was, that the system was oppressive, and the source of much secret discontent among the ryots.

1632. Can you state in what subsequent years you have paid visits to Kishnaghur?—I visited Kishnaghur generally, on an average once a year, having to go to the district every eighteen months to a missionary conference; and I never heard any thing but one loud and unanimous voice condemnatory to the *ryotti* system of indigo planting. This I heard from missionaries and natives.

1633. On the occasion of these visits, did you remain at the Sudder station, or did you go into the interior?—I generally went into the interior.

1634. Mr. *Fergusson.*] Are you aware that exactly the same complaints were made fifty years ago?—It is impossible now to ascertain; because the English papers of that day, which I have consulted, but of which very few now remain, were in the interest of the great

mercantile establishments; and like the Anglo-Indian press of the present day carefully suppressed all facts reflecting discredit on the English; while it is only forty years since the vernacular press, under the auspices of Ram Mohun Roy, started as a power in the country.

1635. Mr. *Temple.*] Did you ever see the statistical reports of Dr. Francis Buchanan on the districts of Dinagepore, Rungpore, and Purnea?—I have carefully studied them as some of the most valuable statistical documents that have ever been published; but I understand that Mr. Montgomery Martin, the editor, has not published all in full.

1636. Mr. *Fergusson.*] But there was a copy of the Dinagepore report published in Calcutta, which is accurate, and which contains the remarks on indigo, to which I refer, and in which it is stated that the complaints are consequent on the dishonest and fraudulent nature of the natives; do you not recollect that report?—Yes, but at the time when those reports were compiled, Indigo Cultivation was only about twenty years established by Europeans, and competition in the trade was not likely at that early period, or 1805, to have led to the results of later years.

1637. When you were on your visit to the Upper Provinces did you enquire into the system and practice of indigo planting there?—I did, in connection with enquiries I made as to why, in the Benares district, a security of tenure was given to the ryot under the Permanent Settlement, which did not exist in Bengal and Behar. I received much information on the subject from Mr. E. A. Reade, and he, having thoroughly studied the question, informed me that the security of tenure obtained for the ryot by Jonathan Duncan gave the ryot great power of protection against the planter or zemindar. I was told also that the Benares ryot was a more honest person than the ryot of Bengal, and had the courage to defend himself when oppressed. I was also informed that in the North-Western Provinces and Behar the indigo planter gives a fair price for the land, and takes all the risk of the crop.

1638. *President.*] Are you aware that the revenue of Benares is like that of the Lower Provinces settled in perpetuity?—Yes.

1639. *Fergusson.*] Did you hear any complaints against indigo or indigo planters in the North-West?—I had no opportunity to make particular enquiries on the subject, but as far as I could incidentally learn, the system seemed to be pursued in a different way from what it is in Bengal.

1640. But if the system is the same in the North-Western Provinces as in Bengal, is it not reasonable to suppose that the complaints in Bengal are in consequence of the less truthful and honest nature of the Bengalis, whereby they do not fulfil their engagements?—I believe there is a great want of truthfulness and straightforwardness among the Bengali peasantry, yet still, I believe the system of indigo planting to be oppressive, but I believe too, that it would be utterly impossible to carry out the *ryotti* indigo system among a brave and martial peasantry like that in the North-Western Provinces.

1641. But are you in a position to say whether the system in the North-Western Provinces is indentical with that of Bengal?—I can't say; as I stated before, I merely heard incidentally of the system of the Lower Provinces.

1642. Baboo *Chunder Mohun Chatterjee.*] You have stated that the Benares ryots have courage enough to defend themselves, do you not think that on that account the planters there dare not oppress the ryots as they do in Lower Bengal?—The remark made to me by an official in Benares was, that if a planter in the North-Western Provinces attempted half the oppression laid to the charge of the Bengal planter his head would be at the bottom of a well in a very short time.

1643. Mr. *Sale.*] It appears to be

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your opinion that a great part of the oppression which you believe to exist in the Lower Provinces is attributable to the cowardice of the Bengali ryot, how do you account for the recent general resistance to the demands of the planter by the Indigo ryots ?—I do not attribute the oppression wholely to the cowardice of the ryot, but I believe the continual sufferance of it to be attributable to that cause; I, for instance, have found in my connection as a Missionary wiith Christian congregations, that the spirit of freedom imparted by Christianity has led Christian villagers to complain and vindicate their rights against their countrymen who were oppressing them; and had the ryots a feeling of independence they would bring the *gomashta's* extortions in every case to the notice of the planters, so that at any rate the planter would not be, as he now is in various cases, unacquainted with what goes on at a distance from the factory. To my knowledge the ryots have for many years complained of the factory system, but it is the last straw that breaks the camel's back. The rise in prices, the increased value of labor, the ferment of mind produced by recent political events in India, together with the sympathy which is increasing between the educated natives and the masses, has led to the late movement. I believe the *perwannas* of the Magistrate (Mr. Eden) have been only the occasion that has brought matters to a crisis and shewed the ryots that it was the wish of the Government to deal impartially with the Government.

1644. Since the recent excitement arose, have you had any opportunity of conversing with the ryots from indigo districts, and what use have you made of them ? - About five or six weeks ago a body of ryots from Kishnaghur called on me, stating in the strongest language their complaints about the indigo planting system, and that the Government Officials were siding with the planters and were the planter's guests, that therefore they had no hope of redress in the Mofussil. Feeling the case to be a difficult one and abhorring the character of a political person, I consulted with four or five Missionaries of different denominations, what was to be done in this emergency; we all felt that as ministers of the Gospel we could not turn the ryots out of the house without listening to their complaints and without endeavouring to calm their minds, and placing ourselves in the position of peace makers; we heard the case, and advised them to submit to the law, above all not to resist, not even to use my own expression, to lift their little finger against a planter, but that they should appeal to the authorities in Calcutta. These men, about 50 in number, went with 1,200 ryots, as I understand, and presented a petition to the Lieutenant-Governor; these soon after returned to their own district; lately, another body of ryots came to me, but I purposely avoided having any communication with them lest I should be considered a prompter of evidence, I beg here to say on behalf of myself that I have endeavoured to use my influence with the ryots on the side of peace and good order; I assured them that the intention of Government was to do justice to all parties.

1645. As far as your proceedings are concerned, and so far as the proceedings of others have come under your own personal knowledge, have you any reason to believe that influence has been exerted over the ryots with a view to giving the evidence they may be likely to deliver before this Commisssion any particular turn ?—None, I believe; I have heard the evidence of the royts given before this Commission, and it is on the whole substantiating the same style of complaint as what I have been hearing of, and reading in Bengali newspapers for the last sixteen years. The only difference is that the ryot's feelings have been exceedingly embittered by the working of a clause introduced by Mr. Wilson into the late Indigo Act

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which renders the ryot responsible for the old balances, and the working of this classes in the law has led to a more serious state of exasperation of the ryot's mind and to a state of feeling among the natives at large, stronger against certain classes of the English than I have seen even during the mutiny; hence a general impression among the natives is that when the interests of the planter and the ryot come in to collision, the interests of the ryot would be sacrified by the local authorities to those of the planter, and that wherever a Magistrate was disposed to do his duty it would lead to a demand from certain influential parties for his removal.

1646. Boboo *Chunder Mohun Chatterjee.*] Have the zemindars had any thing to do with the present excited state of the ryots, and their refusal to show indigo, to the best of your knowledge and belief?—I see a good many zemindars in Calcutta, and during the last cold weather I lived a good deal among zemindars in the Mofussil, away from Europeans, and it is my conviction that the zemindars as a body are too much afraid of the reactive influence the indigo question may have on the rent question to take any active part in it. I have invariably found the zemindars of Bengal, as a class, hostile to any movement which would secure either knowledge, freedom of thought, or freedom of action for the ryots.

1647. Mr. *Fergusson.*] Have you found the same feeling as described in your last answer to exist on the part of the zemindar, also to exist on the part of the planter?—I am better acquainted with zemindars than with planters, but as far as the planter is a zemindar his position has the tendency to the same feeling, except when counteracted by higher principles.

1648. Mr. *Temple.*] Previous to the part excitement were the zemindars within your knowledge and experience generally hostile to the planters, and if so, how was that hostility evinced?—Not having lived in an indigo district, I could not give an answer from personal observation. But I believe that on the whole the native zemindar is a greater check upon the oppression of the ryots by *gomashtas*, than a foreigner can be.

1649. But has the zemindar the same interest as a planter would have, in preventing any oppession upon the ryots?—The planter, as a bird of passage in this country, is much in the position of a rack-renter upon Irish estates, who sacrifice the future, to realize present advantages, whereas the zemindar and his family have a permanent stake in the country. According to theory, the planter from his training and habits as an Englishman ought to be superior to a zemindar, but the testimony borne throughout in the Aborigines Protection Committee Report of the House of Commons has established the fact that throughout the world wherever the Anglo-Saxon Colonists came into contract with natives, the natives were either extirpatedor reduced to seldom.

1650. Mr. *Fergusson.*] But the Planter does not suck the orange, throw it away, and embark on board ship. It must be his interest to leave it full to enable him to get a good price for the factory, and sell what he possesses. Is not this the case?—Yes? as far as the buildings and the immediate property is concerned; but I never heard but one opinion as to the system, that though the indigo planting benefitted the planter, his relatives, and the factory servants, it tended to the pauperization of the ryot. If men's interests and their duty coincided, we would have had no slavery, because oppression is against a man's interest, yet the history of the world shows the opposite.

1651. Mr. *Sale.*] But under a fair system, with equitable laws and an efficient police, do you not think it possible that an Englishman may so conduct himself as not only to carry on trade successfully, but also to secure the affection of the ryot?—Most decidedly so; but planters themselves have told me that under the *ryotti* system of indigo culti-

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vation it was almost impossible to secure both the prosperity of the factory and that of the ryots in Bengal. I have in fact heard stronger complaints against the indigo system from planters themselves than from any other class, but they were involved in it, and did not see their way out. Hence I believe various indigo planters secretly sympathise with the present movement for reform of the indigo system.

1652. Mr. *Temple.*] But have you never known any planter who, under the *ryotti* system, managed to keep the ryots content?—Never. I should consider it an impossibility under the present system.

1653. But have you known of just and considerate planters try and fail in this respect?—Yes, but as in the Police, educational and other systems, men find they cannot, as individuals, reform a system.

1654. Do you consider on the whole, that the feeling of the ryot is at the present time favourable towards the Government?—Throughout India the peasant does not look to the supreme authority; his government is the next Magistrate or local authority; and the working of the present Act has created a feeling, among all ryots I have come in contact with, of bitter hostility towards the ruling authorities generally.

1655. But several witnesses, Missionaries residing in the indigo districts, have stated their opinion to the fact that one reason of the ryot's recusancy during the present year was a belief that at least the authorities were on their side and against the planters. Do you concur in that opinion?—I believe the remarks of the Missionaries and others refer to the state of opinion previous to the passing of the Act; but the working of the Act has very much changed that state of feeling.

1656. But in what particular respect has native opinion been influenced unfavorably by the working of the Act, *i.e.* what particular part of the process is it they complain of?—From what I have heard directly from natives themselves, and from what I have seen of their own letters, they complain that the statements of advances on the part of the factory are generally taken for granted by the Magistrates without due and careful enquiry as to whether they are real, fictitious, or exaggerated, and one point that now and in former times has been constantly and bitterly complain of, is that when the officials go out to decide cases between the ryot and the planter, these officials spend much of their time with the planters, and in society where they are likely to hear only one side of the question.

1657. But has not the fact of enquiry being ordered had a pacifying effect on the minds of the ryots you have met with?—Yes; to a certain extent, because they feel that the attention of the authorities is directed towards them.

1658. *President.*] Is it your opinion that ryots clearly understand the object of this Commission, *viz.* that it is *not* one for redress of individual grievances?—They did not at first, and hence the flocking down to Calcutta of so many of the ryots some time ago.

1659. Mr. *Temple.*] But when commenting on the recent Act, have the ryots understood its temporary character?—No, they do not. Ninety-five per cent. of them cannot read, and the fear of the higher class of natives is that the Act may be permanent. This feeling descends to, and influences the lower classes.

1660. Have the ryots understood that, before enforcing the recent Act, the authorities and the planters used every persuasion to induce the ryots to sow according to engagement, and that even men in jail had the option allowed them of being set free on sowing indigo. Has the consideration thus evinced had any effect on the ryots?—Yes, but the feeling of distrust, generated by the recent conduct of the local authorities in carrying out the Act has, to a great extent, neutralised the effect of this.

1661. Then do you consider that in the recent proceedings at least a full consideration has been shown to the interest

of the planters?—My view from all I have known on the question is, as I expressed it to an official lately, that the clauses added at Mr. Wilson's instigation made the Act essentially a slave law, and that in fact the working of it amounts to an attempt to sow indigo at the point of the bayonet.

1662. When ryots make general complaints, such as you have described regarding the system of indigo planting, have you known any instances in which exaggeration has been made on a foundation of truth, or has the complaint been merely an invention?—From my own experience of the ryots, I have considerable distrust of ryots' evidence where their personal interests are concerned; but their statements on this question, coming from such a widespread variety of tests, in regard to which there could be no possible collusion, are corroborated so much by what is and has long been known of the indigo system as being a non-paying system, which therefore can only be carried on by coercing the ryots, and also on the grounds that the general statements they have made coincide with what has been known of indigo districts during the last sixteen or twenty years, that I do not believe that the general statements made by the ryots against indigo are exaggerated.

1663. Mr. *Fergusson.*] Do you believe that the statements of the ryots as to outrages on women, destruction of houses, &c. are generally correct, which statements we were informed had been made in your house?—I certainly was informed by various respectable natives of the case referred to by Mr. Bomwetsch. It was the subject of general conversation at the time, and excited strong feelings, of indignation among the natives. When the man related in my verandah the account to Mr. Bomwetsch, I was not listening, being occupied with something else. I had heard the account previously in Calcutta, but I did not tax my memory with the names of persons or places, as I felt we had to enquire about a *system*, and we might have a good man working a bad system, and a bad man working a good system. For instance, if it could be shewn that in a certain district there were four or five Missionaries guilty of immoral practices, this would not prove that the Missionary *system* was bad, and so with alleged immoral practices of planters as bearing on the planting system. I, of course, can have no personal knowledge of this, any more than I can have of many vices in society, whether European or Native, which are deeds of darkness, and done in darkness. But mingling freely with natives of all classes, I have been obliged to hear such charges, and there is no question that the occasional occurrences of outrages, is a general belief of the natives, and tends to make indigo planting odious.

1664. Did you not give the tale circulation as an individual instance of a general practice among planters, and did you believe that instance to be true?—Not as an individual instance of a general practice, though I have been acquainted of late years with various facts relating to outrages; I am glad to acknowledge, however, that there is a great improvement in the morals of indigo planters. That such things should be of occasional occurrence in a certain state of society is not surprising; from the respectibility and integrity of my informants. I find it morally impossible to disbelieve it; I have no inclination to blacken the character of my countrymen.

1665. Mr. *Fergusson.*] You have resided a good deal of late about ten miles south of Calcutta; do you know any thing about the salt manufactory, a few miles further South, say at Tumlook?—No; nothing of Tumlook. It is a long way off, in fact a day and a half's journey from my residence at Thakoorpukur.

1666. Would you be surprised to be told, that more oppression is practised on the Molunghees or Salt ryots, than what you have stated to be practised on the indigo ryots in Kishnaghur?—I believe oppression is the moral rule in Bengal, but I can know nothing of the Molunghees.

1667. Do you consider generally that

natives are fit to be trusted with magisterial powers in the interior of the country; more especially, where there are many Europeans located?—Yes; a certain class of natives; and I think that for the sake of impartial justice to the native individuals of that class, morally as well as intellectually qualified, they ought to be appointed in due proportion, otherwise the antagonism of race, which is on the increase in India, will render it very difficult to get an impartial administration of justice between the Europeans and natives, if magisterial authority is confined only to the dominant race; besides the exclusion of natives from magisterial offices, would hereafter create very serious political hostility to the Government.

1668. Baboo *Chunder Mohun Chatterjee.*] If the European planters were subject to the same laws and equal punishment with the natives of the country, by the Mofussil authorities, would they not be deterred from committing affrays, kidnapping people, and other unlawful acts?—As a matter of justice there should be but one law of moral equity for the European and the native; but unless the European officials appointed, are well acquainted with the natives and their language, and able to judge for themselves, without the intervention of interpreters the danger is that natives would have little chance of justice, when their interests were brought into collision with those of Europeans, and that many European officials might be tempted to carry out the maxim, "our own countrymen, right or wrong."

1669. Mr. *Temple.*] Then do you consider that the European would have nothing to fear, if he was subject to the Mofussil Courts, but on the contrary, the fear would be for the ryots. Is that your opinion?—Yes; but all would depend on the constitution of the court, and that administration of the law.

1670. *President.*] Are we clearly to understand that it is your opinion that if Europeans were subjected to the local courts, they would be more prone to oppression and less amenable to reason than they are now; or in other words, that having to look to the local authorities alone, their powers would be increased?—In indigo districts, there is not a due admixture of native and European Magistrates; and I don't think impartial justice would be likely to be administered were there only European officials, or that the natives would have confidence in the equity of their administration.

Saturday, 21st July, 1860.

PRESENT:

W. S. Seton-Karr, Esq., C.S., *President.*

MEMBERS.

R. Temple, Esq., C.S. | Reverend J. Sale.
W. F. FERGUSSON, ESQ. | Baboo Chunder Mohun Chatterjee.

The Hon'ble ASHLEY EDEN, *at present Magistrate, Collector, and Salt Agent, Cuttack.*

3571. *President.*] Will you state to the Commission the districts and appointments in which you have had experience?—I was first appointed Assistant Magistrate and Collector of Rajshahye, and, for a short time, had charge of the Sub-division of Nattore in that district; I was then appointed to the Sub-division of Aurungabad in the district of Moorshedabad; I was then employed on special duty, and then made Deputy Commissioner of the Sonthal Pergunnahs, and was next appointed to be Magistrate and Collector of Baraset. Then I officiated as Junior Secretary to the Board of Revenue, and this year I

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joined my appointment as Officiating Magistrate and Collector and Salt Agent of Cuttack.

3572. During the time you held these appointments, did you endeavour to mix familiarly with the people, and had you frequent opportunities of ascertaining the working of the Indigo system ?—Yes, I always endeavour to mix as much as I could with the people, to ascertain their views upon all subjects, and, in the districts of Rajshahye, Moorshedabad and Baraset, I had ample opportunities of ascertaining, both from the natives and the planters, the working of the system.

3573. Do you hold the opinion that that cultivation is the result of free agency on the part of the ryots, or that it is in a great measure compulsory ?—My opinion is that with the exception of Factories which have a large extent of *chur* lands cultivated, it is in no instance the result of free agency, but that it is always compulsory.

3574. Will you state to the Commission as fully as you can, the facts, proofs, or reasons which have induced you to hold this belief ?—First, I believe it to be unprofitable, and therefore I cannot believe that any ryot would consent to take up that cultivation, involving as it does serious pecuniary loss to himself; secondly, it involves an amount of harassing interference to which no free agent would subject himself; thirdly, from a consideration of the acts of violence to which the Planters have throughout been compelled to resort to keep up this cultivation as proved by the Criminal Records of Bengal; fourthly, from the admissions of the Planters themselves that if the ryots were free agents, they would not cultivate Indigo; fifthly, the necessity under which the Planters state themselves to be of spending large sums in the purchase of Zemindaries and other descriptions of rights, giving them territorial influence and powers of compulsion, without which they would be unable to procure the cultivation of Indigo; sixthly, the statements of ryots and the people generally in the district in which I have been; seventhly, the fact, that as soon as the ryots became aware of the fact that they were by law and practically free agents they at once refused to continue the cultivation.

3575. Can you point to any particular records, printed or other, in support of your assertion regarding acts of violence ?—I beg to hand in an abstract of forty-nine serious cases of murder, homicide, riot, arson, dacoity, plunder and kidnapping, which have occurred from the year 1830 to 1859, some of which I have taken from records which came before me during my incumbency; others from printed Nizamut reports, and all from authenticated papers. I also give a file of heinous cases connected with the cultivation of Indigo, which occurred previous to the year 1810, with a view of showing that on the commencement of the system of private trade in the interior of the country, these acts of violence were resorted to, and in consequence of those acts, five Europeans were punished, and deported from the country; and the Government, in a Circular Order of 20th July 1810, considered it necessary to warn the Magistrates, to check the system of forcing the cultivation by means of advances on ryots. This last statement I have derived from a printed Parliamentary Report of 1820, on the occasion when the Directors of the Company were charged with impeding the settlement of Europeans. The great majority of the cases in the first list filed have occurred within the last ten years.

3576. Could you state how many of the above cases came under your personal observation as Magistrate ?—Under my own actual observation I only remember two cases of those noted in the list. One was the case of kidnapping in Shanpore Factory, Bansbarria, in the Rajshahye district, in which one man was confined and died in the godown, and his body was thrown by the factory servants, and sunk by means of bags of bricks, in a *jheel*. This I know from having been Assistant to the Magistrate, who tried the case; and being acquainted

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with the parties concerned in it. The native servants of the Factory were punished by the Judge, but were released by Nizamut who ruled, that although there was no doubt that the man had met his death whilst confined in the godown, yet that there was no distinct proof of the precise means by which he met his death, and therefore they merely punished those who were engaged in concealing the body. Another case mentioned there which I myself investigated, was a case in which the servants of the *Hobra* Factory went with a large party of ploughmen and ploughs, and ploughed up about 125 beegahs of the ryots' cultivation, and sowed Indigo on the land. I imprisoned the Factory people and was reprimanded for leniency, and for having shewn a prejudice in favor of the planters. Another case which I want to mention, which though within my own knowledge, is not contained in the list, was, that when I went to the Aurungabad Sub-division I found that it was the custom to carry off the cattle of the ryots who would not sow Indigo. It having been brought to my notice that a great deal of suffering was occasioned to the ryots, by the sale of their cattle in the previous year, I instituted enquiries and having ascertained one of the places in which the cattle were kept, I sent out a party of Police, and released from one of the out-factories about 2 or 300 heads of cattle which even when brought to my own house, the ryots through fear of the Planter were afraid for several days to come forward and claim.

3577. What was the distance of the Sub-division from the head quarters of the Factory, and why was the Sub-division established there?—The Assistant Magistrate's residence was between fifty and one hundred yards from the Factory, and the Sub-Division was established partly on account of the disputes between Messrs. Lyon and White on the one part, and Mr. David Andrew on the other; and partly on account of the number of complaints, which came from that quarter, of the oppression to which the people were subjected by the servants of the Factories. On joining the Sub-division, the head-quarter house was not being yet erected, and not knowing the causes which led to the selection of that site, I recommended its removal to the town of Junghypore, which was the principal *entrepot* of trade in that part of the country. On going to Aurungabad great objections were raised by the Planters, however to the selection of a site so close to the Factory, on the grounds that the Magistrate's Court would interfere with business of the Factory. It is worthy of remark that it was the Factories of these two firms, which were first attacked during these disturbances. In justice however to the Manager, Mr. McLeod, I wish to state that I always found him personally willing so far as was consistent with the interests of his employer to pay attention to the complaints of the people, and, to this, may, in a great measure, be attributed the fact that the Factory was not then a paying concern. Since then the cultivation was greatly been increased, and I am of opinion that it was owing to that that the late disturbances took place in that concern.

3578. Mr. *Fergusson.*] In the forty-nine cases which you ferretted out, as having occurred during the last thirty years, is it not the case that in more than half of them, Europeans have not been accused, or, if accused, have been acquitted?—There are scarcely any one of these cases, in which the European or Principal Manager of the concern has ever been put upon his trial, although in many of them, the Judges trying the cases have expressed strong opinions that such Europeans were themselves implicated in them; and it is to this importunity and freedom from responsibility that I attribute the constant recurrence of these violent outrages.

3579. In such instances as you have mentioned, was it not a gross derelection of duty on the part of the Government not to prosecute the Europeans?—There certainly was a failure of justice which,

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in my opinion, may, to a certain extent, be attributed to the strong bias, which the Governor and many of the officers of Government have always displayed in favour of those engaged in this particular cultivation; this may also partly have arisen from the difficulty which exists under the present law of obtaining a conviction against Europeans, as for instance in the case in which a Planter, named Dick *alias* Richard Aimes, was murdered by a European Planter named Jones, a French Planter named Pierre Aller, and some native servants, in which the Frenchman and the natives being amenable to the Courts of the country, were imprisoned for life, whilst Young, the European British subject, not being subject to the jurisdiction of the local Court, was tried in Her Majesty's Supreme Court in Calcutta, and was acquitted on precisely the same evidence as was brought against the foreigners and natives who were convicted in the district Court; the sentence being upheld by the Nizamut Adawlut.

3580. Then you consider that in that case justice was obtained in the Mofussil Courts and denied in the Supreme Court?—I consider that the Judges of the Court of the Nizamut Adawlut are fully as competent to come to a decision on the evidence before them, as a Calcutta petty Jury. I shall therefore consider that in this instance a failure of Justice occurred in the Supreme Court.

3581. If I tell you, that I was in the Supreme Court during the whole of that trial and with a strong feeling against the prisoner, and that I, and most other gentlemen in Calcutta, considered it impossible to find him guilty on the evidence, would it alter your opinion in any manner?—No, as with those facts before them, and commenting on those facts, the Sudder Court subsequently convicted the remainder of that party as accessories to the murder on that evidence; the previous acquittal in the Supreme Court, and the distrust thrown upon the evidence having been urged by the defendant's Counsel, and over-ruled. Moreover, if the murder was not committed, where is Dick *alias* Richard Aimes, who has never appeared since.

3582. In the other cases contained in your list in which no remarks are made by the Judges, is it merely your opinion that the Europeans among them were guilty parties, and should have been punished?—Having had very little conversation with any other parties on the merits of these cases, I am not prepared to state whether any other person has formed the same opinion, but in my own certainty the European who organized an attack, who conceals the offence, and in one instance even allowed one of his servants, who had murdered a ryot, to be concealed, whilst a third party was sentenced capitally, should be held liable to the same punishment as a native of this country would have in all probability been subjected to, if he committed the same offence. I allude to the case of Mr. Patrick Smith of Dulleemulla Factory, in which a servant of his murdered a Chowkidar, who endeavoured to resist the carrying off of ryots who refused to take advantages for the cultivation of Indigo. The man admitted the murder to Mr. Smith the same day. The actual murderer in that case was not apprehended, but another servant of the name of Ram Sing was capitally sentenced for that crime. Some months subsequently a second murder was committed by the same man, and a rumour spread that this man was really the murderer in the former case. On the representation of Mr. Hills, Dr. Archer and others, Mr. Smith then appeared before the Sudder Court, and in consequence of the statement there made, the sentence of Ram Sing was commuted, and the real culprit was apprehended.

3583. Then in this instance, did not the Sessions Judge and the Sudder Nizamut convict and sentence to be hung the wrong man?—They convicted the accomplice, who was present at the time, but who had not actually struck the fatal blow, instead of the principal, who was concealed in the Factory, where he was subsequently found by the Magistrate. This arose from the fact that the

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two men were up-country lattials, not natives of Bengal, in consequence of which some confusion occurred in the identification of the principal and the accomplice by ignorant Bengali ryots. If the European Planter had come forward, as disapproving of the crime, as he was bound to do before the Magistrate or the Sessions, this difficulty of identification would not have arisen. The conviction of the Courts was according to the evidence before them.

3584. *President.*] Is it not a very unusual thing for additional or supplementary evidence to be either offered or received before the Sudder Nizamut, such Court deciding only from the records?—I never heard of a similar course of proceeding; I believe the evidence to have been received at the instance of the two Messrs. Trever, one of whom was legal Remembrancer at the time.

3585. Mr. *Fergusson.*] In the course of enquiries, have you not come across similar cases in the Opium and Salt Departments?—No! I have not perused any records, nor have I any personal knowledge of such cases.

3586. Have you not heard of similar cases in one of the Salt Agencies in the *Midnapore* Zillah?—I have heard that some heinous offences occurred in some way connected with the Salt Department at Hidgelee last year. In what way these cases arose, or in what way they were connected with the Salt Department, I have no knowledge whatever; I believe them to have arisen from disputes between the Preventive and manufacturing branches of the Salt Department; but my knowledge is entirely derived from general rumours. In the Opium Department I have never heard of any cases whatever.

3587. Do not any case similar to those in your list arise from disputes between rival native Zemindars respecting Lands, Hauts, &c.?—Frequent affrays and kidnapping arise from such sources of dispute, but of late years they have nearly ceased in that part of the country of which I have special knowledge—and I believe generally throughout Bengal; they however more frequently take the form of disputes between two strong contending parties well able to cope with one another, and do not, as in the Indigo cases, shew the strong continually preying on the weak, and disputes arising out of a false system of trade.

3588. Have you any reason to believe that the system carried on in the Silk trade was different as regards ryots from that of the Indigo business?—I have no knowledge on the subject.

3589. Have the Indigo cases now ceased in Bengal together with the cessation of the same Zemindary affrays; or do the former continue in any district while the latter have ceased?—I believe the establishment of the numerous Sub-divisions throughout Bengal has had the effect of decreasing violent open outrages of every description such as affrays; but the seizing of ryots and the confinement within the Factory walls, has in my opinion, increased as violent overt acts have decreased. The greatest increase however is in cases unconnected with Indigo on account of the fear which the Zemindars have of these Sub-divisions, and the great facility which is afforded to the European Planters of opposing the Ryots in any way which does not involve any great publicity, such as would necessarily attract the attention of the higher authorities.

3590. Are kidnapping and imprisonment still carried on by Zemindars as well as Planters?—Yes, I believe they are in many instances, but since the passing of Act X of 1859, I believe that they have greatly decreased.

3591. Then, has the increase of these offences to which you alluded solely occurred in Indigo concerns?—Whether it is that there is an actual increase, or whether it is that the establishment of Sub-divisions have brought them to light, or whether it is that the punishment of several Planters for this offence has given the ryots greater confidence to speak more openly of these things, I am not sure; but I have certainly heard more of such cases within the last few

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years than before, and I believe that it may be attributed to the increased reluctance of the ryots to sow without such compulsion, and also to the check which has been given to such outrages.

3592. In case 18 you remark that the Europeans for whose benefit the crime was committed was not punished. Do you ground that opinion from the observations of the Judge or from what you read of the case?—To the best of my recollection the printed report of the case will shew that the Judge, Mr. G. C. Cheap, remarks that the case was one in which great blame attached to Mr. Tripp, and said it was cause of great regret to him to put on record the commission of such violent outrages by Europeans, but that he was glad to state that Mr. Kenny, the Proprietor of the concern, was on his way to England, and was not therefore responsible.

3593. In case 29 you remark that Mr. French was in the jail in which these men were confined at the time. Do you mean by your remarks on that case that Mr. French ought to have been brought to trial?—Judging from the evidence, as it appears in the printed report of the Sudder Court, I should, if I had been the Magistrate before whom that case came, have committed Mr. French to take his trial, as it appears that he compromised the case by giving compensation to the owner of the boat.

3594. In case 39 you observe the servants were imprisoned, but Mr. W. Collis, who was admitted by the Judge to give the order, was not put on trial, by virtue of his descent from European stock, on what is that remark founded?—It is my strong opinion derived from a perusal of the case. For the Judge stated that the order was given by Mr. W. Collis himself, and I can conceive no other possible reason, why, if the Judge considered Mr. Collis to have been guilty, he should not have taken steps to bring him to justice, and judging from the practice of the courts I feel convinced that had he been a native his trial would have been directed.

3595. On the whole considering the number of districts and the number of Indigo Concerns and of planters engaged, also the period of time over which these cases extend, considering also the state of society in the Mofussil; do you consider that these serious cases frequent, rare, or otherwise?—These cases do not *in any way* represent the total amount of such outrages that have been committed during the period embraced. The greater part of the selected cases of which an abstract has been given are only those of so serious a nature as necessitated a reference to the Sudder Court either on account of the severity of the penalty involved or in appeal on points of law. My own opinion is that not one tithe of the offences actually committed ever came before any Court at all; of those which are actually brought up by the Police very many are disposed of by the Magistrate himself; anothers of a more serious nature are decided by the Sessions Court without reference to the Nizamut. I have not had the means at my disposal to enable me to lay before the Committee any memo. of such cases. The improved administration of the Police arising from the increase of Sub-divisions has decreased the number of violent crimes of late years, but it has, as a consequence, checked the cultivation of Indigo.

3596. Mr. *Temple.*] But on the whole do you consider that Planters rarely resort to serious violence or frequently; and do you believe that these deeds of violence are committed by a few Planters or by the majority, or what?—I believe that deeds of the violence of those noted in the abstract filed are not frequent, but still they are such, as to keep up and perpetuate a feeling of terrorism without which, in my opinion, the cultivation of indigo could not be carried on for one day. Any act of great violence, committed in any district, such for instance, as the attack of the village of *Haut-dayal*, in the district of Rajshahye, in the concern of Messrs. J. and R. Watson and Co., in which three villages were gutted, three cultivators killed, and six wounded, would be enough

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to strike terror into the hearts of the ryots, in that part of the country for many years to come, and it is only when the ryots have forgotten such acts as these, that any fresh violence of this sort is necessary. I believe that there are many Planters who do all in their power to avoid having recourse to such expedients, but it will be found that one or two outrages of the most serious description have occurred within the remembrance of men in every district and with every concern.

3597. Have you known many Planters, who would not under any circumstances themselves order or authorize such proceedings; and do you know whether such things could or could not be done by the servant without the authority of the master?—I know many Planters who would neither authorize or order such proceedings, but the system is such, that they are frequently involved in such cases against their will, that the system which they pursue, and the class of servants that they employ force them to this; the worst that can be said of such men is, that when they are so involved, they do not come forward as they should do, and publicly disown the acts of their servants and render assistance in bringing them to justice.

3598. You have mentioned generally that European Planters are practically never punished for acts of violence; is it that prosecutions are instituted by the Mofussil authorities, and fail in the Supreme Court, or is it that prosecution is not attempted; and if the latter be the cause, what is the reason?—Prosecutions are scarcely ever attempted. The reason of this is partly because Mofussil Magistrates know the difficulty of procuring a conviction in the Supreme Court, partly from great unwillingness among prosecutors and witnesses to subject themselves to the liability to come to Calcutta to attend the Supreme Court, and to a great extent to the bias in favor of the Planters, which has been too frequently displayed by men in all positions from the highest officers of the Government down to the lowest.

3599. As an officer of Mofussil experience, what do you consider to be practically the difficulties of prosecuting the Planters before the Supreme Court; or how do these difficulties arise?—It never fell to my lot to have to commit any Planter, but judging from my experience as a Justice of the Peace, in obtaining convictions against Europeans, I consider that very great practical difficulties exist. For instance I have committed Europeans to the Supreme Court the bill has been thrown out by the Grand Jury under circumstances which led the Government to direct a recommittal on the same evidence. The evidence was described by the Advocate-General as being of the most clear and conclusive description. The parties were re-committed, on precisely the same evidence, and were convicted and sentenced. In another case, I committed an officer for trial for manslaughter. The officer admitted before me having committed the assault, which led to the man's death. The medical evidence showed that although the man was in bad health, yet his health had been hastened by the injuries he had received. The grand jury threw out the bill; and it is in cases like these, that dishearten Mofussil Magistrates from committing Europeans to the Supreme Court.

3600. But as a Magistrate and Justice of the Peace, would you not commit an offender, if you believed him guilty on the evidence, irrespectively as to your opinion as to what might be the view taken by a Calcutta petty jury or grand jury?—As a judicial officer, if the evidence was very clear in any case before me, I should commit, but, as an executive officer, I should hesitate to take up many cases against Europeans, which under the circumstances I should consider it incumbent on me to proceed with.

3601. Mr. *Fergusson.*] In this list I see eight names of persons whom I personally know to be foreigners, and parties

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liable to the Mofussil Court, can you account for their not being proceeded against, if there were any good grounds for doing so?—Of the evidence against the parties particularly alluded to in the cases you have mentioned, I am not prepared to speak without a reference to the cases, but the exemption to which you allude was probably explained in my previous answer, in which I noticed the great bias which has always existed in favor of Planters from the very beginning.

3602. Then do you consider that the Government officials have sacrificed justice to favor the Planters?—I consider that it has frequently been the case, and I have stated so in official reports. I will go further and say, that as an young Assistant, I confess I have favored my own countrymen in several instances.

3603. *Babu Chunder Mohun Chatterjee.*] Do you believe that if the European Planters in the Mofussil were subject to equal laws and same punishment with the natives of the country, they would be deterred from committing the oppressions you have alluded to?—I believe that with the knowledge that they were subject to the Courts, and did not enjoy the perfect practical impunity which they now possess, the system of force which is known to all to have existed so long, would not have been continued by the Planters.

3604. Is it not the case that if a native gentleman and an European gentleman, a British subject, were found guilty of a similar offence before a Mofussil Magistrate, the former might be sentenced to imprisonment, whereas the latter might get off by paying a fine to the extent of 500 Rupees?—If an English gentleman and a native gentleman were placed side by side in the same case, I hardly think that any Magistrate could punish them in a different manner, but in similar but separate cases, I think that it would frequently happen that a native gentleman would be imprisoned, where as the European could only be fined, because the Magistrate has not, except in particular cases, the power of imprisoning an European.

3605. During the time the Indigo Planters were vested with Magisterial powers, did not some of them abuse their power, within your own knowledge, to serve their own interest?—There were no Honorary Magistrates in my district.

3606. Mr. *Fergusson.*] In the present state of the Mofussil Courts and with the present Judges who preside in them, would you like to see any European friend tried in them?—I think that if the Courts are good enough for the natives, they are good enough for Europeans. If they are not good enough for natives, they are not fit to have any jurisdiction at all over any one. As far as I am myself concerned, I would sooner be tried, if innocent, in the local Sessions Courts, with an appeal to the Nizamut, than in the Supreme Court. If guilty, I would prefer the Supreme Court and a Calcutta jury.

3607. *President.*] Several witnesses have either stated or admitted that Indigo cultivation is unprofitable and unpopular with the ryots, and you yourself have declared your belief that the cultivation for years has been compulsory; how do you reconcile those admissions and your belief, with the fact, that the system has gone on for years without any change?—For many reasons; first that the people of Bengal are naturally patient in enduring oppressions. Years of tyranny and oppression have taught them to bear every wrong without resistance. Their feelings have taken the form of sullen morose hate, rather than active opposition. These pent-up feelings have now for the first time found a vent. Secondly, the Police Courts have, until the last four or five years, been out of their reach. The Planter having the rights of a Zemindar, has reigned over them with the powers of a despot. They dared not leave their homes to go and complain at a distant station; if they did so, they ran the risk of returning to find their cattle carried off, or a relative illegally confined. Even

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in cases in which, on these complaints, the Police when deputed to hold an investigation, sometimes through fear of the Planter, and sometimes corrupted by his money, nearly always influenced by some means or other, reported the case against the ryot. The ryot would then be worse off than before, and his only hope of peace, lay in cultivating Indigo without opposition, but not as a free agent. Thirdly, Bengalis have not usually that power of conjoint action which would enable them with any prospect of success to form a combination against the Planters. Fourthly, ryots, from whatever causes it may have arisen, have certainly all along believed that Government and Government officials were interested in the cultivation of Indigo, that they were so strongly prejudiced in favor of the Planter, that it was useless to complain. The ryots were unable to understand, how a man living in terms of the greatest intimacy, and in daily communication with the Planter, was capable of deciding cases justly; cases in which the interests of that Planter were concerned. Whatever may be the impartiality of the individual Magistrate, it would be difficult to persuade an uneducated native that intimacy of this description would not bias a Magistrate in his official acts. This intimacy has very often, it may be, without the knowledge of the Planter, been made use of by the Factory servants as a means to accomplish their wishes. Again, facilities of complaint have been afforded to the Planters by the higher authorities from which the ryots are altogether excluded, and, I believe it to be the case that this privilege has been made use of, to influence such higher authority against such of the local authorities as may have shewn a disposition to do justice between man and man. And there are cases, in which the removal of officials has been attributed by the ryots to the influence brought to bear by those in the interests of the Planters against such officials. Fifthly, I believe that the pressure of Indigo cultivation has never been so severely felt as during the present time, as although the ryots have always had to sacrifice a portion of their land, and labor, the loss has never been so severe as at the present time, when the value of that land and labor has greatly increased; formerly these lands gave them enough to live upon, and pay their rents, but as there was no market for surplus produce, and but little stimulus to accumulate, it was not worth their while to grow any great amount of produce beyond what was necessary for their own consumption.

3608. Can you mention any cases within your knowledge, in which officials were either interfered with or censured or removed for alleged bias against Planters?—Moulvie Abdool Latief was removed from *Kalaroa* for giving an order protecting the ryots against the forcible entry of the Planter. My predecessor at Baraset was complained of for saying that it was optional for ryots to sow Indigo or not, and was censured by the late Lieutenant-Governor. Of this last case I have no knowledge except what was derived from the Planters themselves, and from the people who still believe him to have been removed for protecting them. In my own case, I was, on private representations made by Planters, reprimanded and interfered with by the Commissioner. Representations were made to the Government for my removal on the ground that I had told the ryots that the cultivation of Indigo was optional. And three petitions were presented by parties of influence in Calcutta within a few months, demanding my removal on this account, and I had considerable difficulty in defending my own position and upholding my independence as a Magistrate.

3609. Mr. *Fergusson.*] Are you aware that the cultivation of Indigo in the district of Nuddea does not occupy more than five per cent. of its area, and if so, how can it be so severe a pressure on the ryots, as you have stated it to be?—Admitting this calculation to be correct you must first direct from that area one, third of the whole as follows, wood-

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waste, village, and unculturable lands. You must next deduct one-third of this for those portions of the district in which Indigo cultivation is not carried on, and with which the Planter has no connection. From the balance you must deduct a very large proportion of wet land suitable only for the cultivation of late rice, and then if you take the remainder, which is the most valuable land in the whole of the district and the most productive, you will find that the Planters have thrown out of profitable cultivation a proportion of the best land which must press with very great severity on those engaged in the cultivation of profitable crops in the part of the district where Factories are situated.

3610. But the seed crops are cold weather crops, which can be grown equally with Indigo and early rice; and, do you think that while grain crops, such as rice, can be taken continually off the same land, it would not be better to vary such crops occasionally with Indigo?—Provided that Indigo were as profitable as any other crop, I can understand that an occasional crop of that plant might be beneficial to the soil, but so long as it is a dead loss to the ryot, out of pocket, even the inferior rice crop is more remunerative to him. But, there are other crops such as *jute*, *sugarcane*, *chillies*, *ginger*, *turmeric*, *tobacco*, which afford the ryot a still greater profit than rice; but even supposing that this was not the case; the land is the land of the ryots, they are the best judges of their own interests, and so long as they object to the cultivation of Indigo for whatever reason. I can conceive no principle upon which it can be argued that it is justifiable for a third party to come in and insist upon a ryot sowing that to which he objects, although it may be in his opinion beneficial to the ryot.

3611. But if a ryot has made a contract and has received money to sow Indigo, upon what principle has he a right to decline to do so?—If a ryot being a free agent, and acting without force, either actual, or moral voluntarily enters into a contract for the cultivation of any crop, he is of course bound to fulfil it, but the result of my experience and my enquiries on the subject convince me that in scarcely any instance, does a ryot, being a free agent, enter into contracts or receive advances for the cultivation of Indigo which is admitted by many competent authorities to involve a pecuniary loss upon the ryot. One of the main elements of the contract, to make it legal, must be that it has voluntarily been entered into by both parties. My own opinion is, that in no instances within the last six years at least, have ryots entered into legal contracts for the cultivation of this crop.

3612. *President.*] But will you state the precise nature of your experience as to how these contracts are first entered into?—From my own experience derived from conversations with both ryots and Planters, and from the examination of the Factory books, and from the inspection of the contracts themselves, and from constant enquiries and investigations for the last four years into the matter, I still continue of opinion that the description of the mode as to how contracts are entered into, given in my letter No. 500, dated 19th June 1858, page 220 of the blue book, is a correct description of the manner in which advances are given and received.

3613. Mr. *Fergusson.*] Do you know that the land in the district of Baraset to which your experience and enquiries appear to have been limited, is unsuited for the cultivation of Indigo, and that it does not produce one-half of the plant which the lands in Kishnaghur and Jessore do?—I have always understood that the lands at Baraset were amongst the finest lands in Bengal, and as the district borders both on *Jessore* and *Kishnaghur*, much of the land is precisely of the same description as that of those districts.

3614. Do you not think that the occasional intimacy between the Planters and officials is balanced by a similar intimacy between the ryots and Darogah and native officials of the district?—My own experience leads me to believe that fear of the Planters' influence and fear

of the representations he may make to their official superiors, render the Police very apt to side with the Planters' people when the opposite party were poor natives. My great difficulty has always been to get the Police to act boldly and straightforwardly in cases of this sort. I have frequently had to find fault with the Police for displaying an unjustifiable bias in favor of the Planter.

3615. *President.*] Have you reason to believe that any portion of that bias is due to illegal or improper influence, such as the payment of money, and if so, on what reasons do you ground that belief?—It has frequently been stated to me by Planters, that unless they had recourse to these means they would find it difficult to carry on their business. I generally believed that as a rule, the Police have hitherto been so corrupt that there is reason to suspect that in very many cases they have been so influenced. Of late years, since constant enquiries have been made into the matter, and an educated and higher class of natives have been employed, and since the salary has been increased, there has been a most decided improvement in this respect.

3616. Then it is your decided opinion that so far from the Magistrates having obstructed or impeded Indigo cultivation, they have not afforded to the ryot the support and protection he might fairly expect?—I think that if the law had been strictly administered by the Magistrates, and if they had at their disposal a staff of well qualified officers sufficient for them to carry out the law in all cases, the present system of cultivation could not have been continued as it has done. I believe that many Magistrates have been deterred from doing their duty in this respect, from a sensitive desire to avoid the ignominous reproach which has always been raised against them of being jealous of the non-official classes; and, in avoiding this reproach, they have allowed themselves to display a bias in favor of the Planters which has in many cases led to a failure of justice.

3617. Mr. *Sale.*] You mention as one reason, why the ryots, though unwilling, have been cultivating so long, that the Police Courts were out of their reach. Did you refer to the distance the ryots have to go to get justice, or to the difficulties arising out of the arrangements of the Courts, or of the character of the *amla*, or to the difficulty arising out of the ryots' fear of the Planter when he is also a Zemindar?—I allude to the fact that in many districts ryots have to go some thirty or forty miles to the nearest Magistrate; and, that through fear of the Planter, who is a Zemindar, he dares not leave his house for this purpose. I also alluded to the fact, that in one district with which I was acquainted, the power of one firm is so great, that the ryots used to come across in my district to complain to me because they dared not go through their own district to reach the station at which their own Magistrate resided.

3618. Do you not think that a simple mode of administering justice, such as that adopted in the cutcherries of the Planters, would be much more effective than the arrangements at present existing in most of the Mofussil Courts?—I have no personal knowledge of the system pursued in the Planter's Cutcherry, but I am not prepared to recommend that the system pursued in those Courts, as I understand them to be, should be introduced into the constituted Courts of the country. I have no doubt that in many cases a Planter may dispose of cases with great justice when his interests are not antagonistic to those of the people themselves, but every thing in such a Court must depend entirely upon the temper ability of the individual presiding.

3619. Is not it often ruin to a ryot to leave his home, say at the sowing season, to make a complaint at any of the Mofussil Courts?—Until late years, it was doubtless impossible for ryots to leave their cultivation to go to a distant Court; but of late years, many district subdivisional Courts have been brought within a day's journey to every ryot in the district.

3620. You mentioned in a previous

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answer that Planters have admitted to you that the ryots are not free agents; does this statement refer to any constraint put upon them, or does it refer to any relation which they supposed themselves to have as their Zemindars?—The Planters have undoubtedly a very mistaken notion of the right of interference with the ryot's crops and cultivation which they consider themselves to possess as Zemindars. They doubtless referred to force and constraint, which in their position, as Zemindars, they were able to exercise towards their ryots with practical impunity.

3621. Mr. *Fergusson.*] Have the native Zemindars and *Mahajans* equally mistaken notions of the rights of cultivation?—I never heard of a Zemindar insisting upon a ryot sowing any particular crop, unless that Zemindar was also an Indigo Planter; neither have I ever heard of a *Mahajan* exercising any interference in the cultivation of the crop of a ryot indebted to him. I never heard from *Mahajans* that they found it necessary to exercise any interference whatever with the ryots; and I know cases in which ryots, who having given *jute* under advances from *Mahajans* living at the distance of thirty or forty miles away, have scrupulously fulfilled their engagements with the *Mahajans*, who had no *Zemindary* rights in the district, and no power in any way of interfering with the cultivation. But I know so far of *Zemindars* collecting a cess, on particular descriptions of crops which is of course illegal, but this interference on the part of the *Zemindar* is not general, and does not extend to interference with the cultivation of crops.

3622. *President.*] Practically do not *Gantidars*, *Jotedars* and other tenant proprietors select their own crops, vary them, fence their own gardens, and plant them and reap the produce without any dictation or any interference on the part of the Zemindar?—Always within my knowledge.

3623. Is there not a great increase of date and sugar-cane cultivation in parts of Baraset, and if so, to whom do you attribute that cultivation?—In the eastern portion of the district there is an extensive cultivation of date, which is entirely grown by the more prosperous ryots who have large *Jotes*. And I also know several instances, in which Zemindars themselves purchase the ryots' lands, and made use of their own waste lands, by turning them into date gardens.

3624. *Baboo C. M. Chatterjee.*] Do you know that a kind of leather strap is kept in the Factories for beating ryots?—I have heard from ryots that there is a stick with a leather attached to it called "Sham Chand," or "Ram Kant," but this I merely heard from the Kishnaghur ryots.

3625. Mr. *Fergusson.*] Have you never heard that this was originally invented and used in the Hon'ble Company's Silk Filatures?—I have never known if this was the case, but I can quite believe that such may have been the case in those days.

Commission adjourned at 6 P.M.

Archibald Hills, Esq., Manager of the Katchikatta Concern, near Hardi Thanna, Sub-division Kurreempore, called in, and examined on oath.

3105. *President.*] Will you state to the Commission the period you have had experience in Indigo planting, and in what concerns?—I was five years at Durgapore as assistant to Mr. Tissendie, who was then manager of the Katchikatta Concern; and I took the management in November last, when Mr. Tissendie left for Shikarpore.

3106. Mr. *Fergusson.*] Will you state what the cultivation was last year, in the spring and October sowings?—The total cultivation was 19,000 beegahs, of which about 9,000 were sown in October.

3107. Do you wish to put in the answers to the Commission's circular, as part of your evidence?—Yes, I do. (Filed accordingly.)

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3108. What extent of October sowings did you effect this season?—11,500 beegahs.

3109. Did you experience any difficulty in doing so, or were any objections made by the ryots?—Not a single objection was raised, and the land was sown like a garden; not a single clod was left on the ground.

3110. During the time you were in charge of the Durgapore division of the concern, were the seasons favourable, and did the ryots receive considerable *fazil*, and were they apparently contented with the cultivation?—The seasons were favourable, and the out-turns larger than they had been previously. The ryots very generally received *fazil* or excess payments, and were quite contented up to the middle of last February; as a proof of this, when Mr. Reid, the Commissioner of the Nuddea Division, passed through, about the 17th of December, on official duty of the railway line, not a single petition was presented to him either against the Katchikatta Concern or the native servants, although numbers of ryots consulted with him about the land they were losing by the railway. He passed through the concern, marching for about 12 miles.

3111. *President.*] About what time did you first become aware of a marked dislike on the part of the ryots to cultivate Indigo?—Up to the middle of February there were no signs of any discontent or dislike; the first intimation I had, was a letter sent to me to Jessore, where I was then staying. I returned immediately, and found that five or six ryots from three or four villages had come into the station, and lodged a general complaint, intimation of which, was given to us by our Kishnagur *mooktyar;* just about that time Mohesh Chunder Chatterjee came up to his house at Gosain Durgapore; he was many years ago, a *kerani* or English writer at Katchikatta, and I understand his father was a *gomashta* of the factory, and was dismissed from his situation. He called upon my ryots, and they used to come and meet at his house. I was told by my servants that the Darogah assisted him in summoning these ryots through the police. I complained verbally of this to Mr. Maclean to get him removed; he was subsequently removed to another Thanna, I cannot say for what cause. The dislike spread chiefly through the intimidation of the villagers of Dukhi, instigated by Mohesh Chatterjee; he has two or three small villages in *mourusi* from Ram Rutton Roy of Narrail, Jessore.

3112. Mr. *Fergusson.*] What extent of spring sowings have you been able to accomplish this season?—1,800 beegahs instead of 8,500, for which we had arranged in the usual way, and of those 1,800 beegahs, 700 lay in the Pubna Zillah; the villages of which zillah finished their sowings as usual.

3113. Were all the sowings for which you had agreed in Pubna, completed?—Yes.

3114. Then your whole deficiency lay in the district of Nuddea?—Yes, with the exception of two small villages in Jessore, in which Mohesh Chatterjee has an interest.

3115. *President.*] Can you state what causes were generally alleged by the ryots, as their reasons for not sowing?—There were several causes, the prevailing idea, that Indigo planting had been stopped by the Government was the chief cause. Some of the good ryots were led astray by one or two men of each village, who kept up the agitation, and who were constantly passing backwards and forwards from Calcutta. In their petitions to the authorities, they made general complaints of oppression, also the villagers of Poamarri made complaints to me of the oppression of my head servants; I went to meet them, for the purpose of enquiry, and after sitting with them for the first day, we arranged that they should bring their proofs the following day, but they never came; having been, I believe, induced by the Dukhi villagers not to come. The villagers have told my head people,

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that they cannot settle with me, as they have taken an oath to Mohesh Chatterjee not to do so without his consent.

3116. Was it ever brought to your notice that emissaries from Calcutta or other districts had instigated the ryots not to sow?—No; no such instances were brought to my knowledge. A *chowkidar* was punished by Mr. Taylor, for giving out on a *haut* day, that they were not to sow Indigo under penalty of 14 years' imprisonment. This was in the Kananuggur division of the Nischindipur Concern.

3117. Do you think that on the whole the police acted impartially, and gave a fair amount of support to planters?—most partially; especially while a Darogah, named Buddinath was at the Hardi Thanna. This was the man I complained of; though his influence the *amins* and *takidgirs* never came near the factory of 6 weeks.

3118. Had you the same difficulty to induce the villages to sow in *ilaka* as in the *be-ilaka* villages?—In several of the *be-ilaka* villages, they behaved better than in one of our talook villages. In one instance, Hurronath Roy, of Narrail, on my writing to him, sent orders on his Bukshipore *naib*, to make these three villages sow, and they did sow. A large village belonging to Poolin Behari Sen, of Berhampore, Moorshedabad, refused to sow, even on the orders of the Baboo, and he wrote back to me in an English letter, that he had no power over his ryots since the passing of Act X of 1859. In his other villages, in the Nischindipore Concern, the ryots did sow on his requisition through his *naib*.

3119. Then on the whole, your difficulties this year have not been increased by any opposition on the part of the zemindars?—No, on the contrary, I received assistance from them, when I applied for it. We have always been on friendly terms with the zemindars.

3120. How many suits for breach of contract have you been obliged to institute this year?—I have sued almost every village in the concern in the Kishnaghur district. First we began by suing the whole villages; then instructions came out from Mr. Herschel, that we were not to sue more than five in one plant. On my representing the matter to Mr. Lushington at a personal interview, he allowed a large number to be sued at once, but warned us, that a failure of proof against any one, might involve the dismissal of the whole suit. We must have instituted suits against a hundred villages, and in each, perhaps, on an average, 30 men were included.

3121. Were pains taken by the authorities to explain to the ryots the temporary character of the law, and the consequences of their not sowing, should the contract be proved against them?—The greatest possible pains were taken to explain to the ryots the real state of the case, and it was particularly explained that it would be optional for them not to sow next year; but they were in such a state of excitement, that they would not believe what was told them; some ryots said to Mr. Graham Taylor, in my presence, "one Magistrate told us, we might sow or not as we liked, and you put us in prison for three months for not sowing." Even when the first decrees were passed against some ryots, the others would not believe that any thing would come of it, and said that they would be sent back in three days.

3122. Baboo *C. M. Chatterjee.*] What was Kedarnath Mookerjee before, and what were his former circumstances?—I believe he came to the factory as an English writer, when he was quite a young man, and eventually became *naib*, 12 or 14 years ago. He has been on the receipt of 50 rupees a month ever since I have known him.

3123. Have you any idea what he is worth now?—No, I can't say; but I know he has a *pucka* house on the Matabanga.

3124. Are you aware that he made a collection twice, and collected some thousands of rupees on the occasion of his son's marriage, and thereby created

a strong bad feeling in their minds of the ryots against the factory?—I recollect that about two years ago he asked Mr. Tissendie's permission to collect *bhikha* from the *ilaka* ryots, and I believe Mr. Tissendie's answer was, that so long as the ryots did not complain to him about it, he might do so. Since the disturbance has broken out, I have been told by people, that he has collected large sums of money; but not a single complaint was made against him until the disturbance has broken out. The ryots since allege that they were afraid to complain, but I ride out unattended almost every day in the year, and until the last four or five months, whenever I passed a village, have always been attended by 20 or 30 ryots over the Indigo land, and freely communicated with them about their private affairs.

3125. *Mr. Sale.*] Do you think that in a case like that which you have referred to, the *naib* of a concern would have sufficient influence to prevent the ryots complaining to you, even though they might have access to you?—There is no doubt that the natives are very much afraid of a *naib*, but I can hardly think, that out of so many ryots, not one man should have mentioned it to me.

3126. Mr. *Fergusson.*] Do you think that the *parwanna* issued in this district, and the removal of the Assistant Magistrate from Hautbolia had a prejudicial effect on the minds of the ryots and tended to keep up the excitement against Indigo planting?—Most undoubtedly; but for the *parwanna* of the 19th of April, and Mr. Tayler's unaccountable removal at the end of 15 days, taking place at the very time when the *parwanna* was issued, the whole of the Concerns in that part of the country would have sown. The next *parwanna*, to the effect that it was optional with them to sow their lands with Indigo or rice, settled the question; on the evening of the 19th, every body was giving in *razinamas* agreeing to sow Indigo; on the 20th, they took the seed from the Durgapore Factory; and on the 21st, after hearing of those occurrences, they sowed all their Indigo lands with rice.

3127. Then do you attribute the fact of your not being able to sow this season to the executive management of the district?—Entirely to the *parwanna* of the 19th and Mr. Tayler's removal.

3128. *President.*] For what term of years are the contracts for the Katchikatta Concern generally entered into?—Ever since I joined the concern, we have never had any difficulty in the sowings, nor in the people taking advances; therefore we never considered it necessary to take any written agreements from the ryots.

3129. Then do you not charge the ryots for stamped paper?—Yes, we charge two annas every year to each ryot, whether *ilaka or be-ilaka*.

3130. *Mr. Fergusson.*] Have you anything to say in answer to the complaints made before the Commission, by some ryots of the Katchikatta Concern?—With reference to a man, who called himself Dudh Mullick, of Bundobil, there is in the factory books of a man named Dukhi Mullick, but whose brother's name, Shujam, is also written with his, the *jumma* being in Shujam's name. I put in certain extracts, which have been made under mine own eye from the factory books. Among other statements, he says, "I sowed Indigo in *Kartik*, how then could I have taken advances in *Agran*." I reply that the advances were made on the 7th December, which would be about the end of *Agran*, by myself; it being the custom of the factory not to make advances till that period. The same man also stated that he gave 50 bundles. I had sown three other beegahs in *Kartik* making 11 beegahs in all. I reply that in 1858-59, he sowed in October 7 beegahs 14 cottas, and 3 beegahs 6 cottas in spring; with the October sowing he had cold-weather crops; he also reaped a cold-weather crop from spring sowings. He was credited with $114\frac{3}{4}$ bundles, which cleared off the former year's account, and he got excess 3 rupées and 14 annas, for his 11 beegahs of *khatta* land 22 rupees, making a total of 25

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rupees 14 annas; six rupees were credited him for his rents; the receipt for which he got from the *gomashta* in my presence, the remaining 19 rupees 6 annas were paid to him with mine own hands.

3131. *President.*] Do you feel convinced that Dudh Mullick, whose evidence was taken on the 26th of June, is identical with Dukhi Mullick of whom you now speak?—The village is the same; one of the *jummas* agrees with what he states; and he has also a brother. "He states that last year the *Sahib* cut down several bamboos which he required for his vats, the payment for which he did not get." I reply, that 67 bamboos were taken from the village, 3 rupees, 2 annas, and 3 pie were paid for them to Ramsunder Mundel of that village.

3132. Mr. *Sale.*] Does this man's brother share in the *jumma* and also in the Indigo *khatta*?—Yes, he shares in both.

3133. Ramchurn Biswas, of Baradee, was examined on oath, and said, "I sow indigo every year, and get nothing for it. Last year they sowed 24 beegahs with Indigo, they call it 12. The *amin* told me that I delivered 29 bundles; but by my reckoning it should have been fifty. I got no excess paid last year, nor did I take any advances."—My answer is, that last year the Baradee ryots were permitted to fill a vat to themselves, and they divided the Indigo amongst them; so that if there was any unfair play, it was amongst themselves. In each of the years 1858, 1859, and 1860, he received four rupees advance, but that was carried to his rent account, for which he got a receipt before me. With regard to his statement as to carts, the *gomashta* tells me from the books that he got five rupees advances for carts, but that he only worked for nine full days, which at 6 rupees 8 annas a month, was one rupee, 14 annas, and 3 pie, so that on this account he still owes the factory 3 rupees, 1 anna, and 9 pie. I was not at Katchikatta last year in the manufacturing time; I was at Durgapur, but I have done what I can to ascertain the facts from the head servants of the factory and the factory books. Chaitun Mundal, of Par Durgapore, says: "the factory people cut down some of many trees, from which there would have been about 150 maunds, worth 10 rupees per 100 maunds. They cut down those trees to make charcoal, and only gave me six annas for them." To this I reply, I found eight *babul* trees had been cut, weighing five maunds, on the 14th of July; and he was paid at the rate of eight rupees per 100 maunds, on the 26th of September. These items are gathered from the factory books, and happened in Mr. Tissendie's time. He further said: "Formerly I used to receive something in advance; say from three to four rupees, this was in Mr. Macdonald's time." To this I reply, that in 1860, he received 20 rupees 10 annas; in 1859, 4 rupees; in 1858, 20 rupees 8 annas. The last payment of 20 rupees 8 annas was transferred to his rent, for which he got a receipt in my presence. The other payments were before my time. I could not say whether they were paid by transfer or by cash.

3134. Mr. *Fergusson.*] Do you desire to make any statement about the case of the abduction mentioned by Mathur Biswas?—I can distinctly state that as the case was printed in the *Hindoo Patriot*, it is utterly false. I was at Jessore till past the middle of the day, on Saturday, the 11th of February, and arrived at Katchikatta late at night. The distance was 50 miles. I did not leave the house next morning, being very tired and having no horse; the one I rode into the factory, being a *gomashta's* piebald pony, belonging to Goldar, and which was returned before I got up. I could not therefore have been out on horseback that day as stated in the *Hindoo Patriot*.

3135. Can you undertake to say, that you never saw the woman Hurro Mani that day or on the next three days?—I believe I had a glimpse of the woman

in the factory, and then and there ordered her to be returned to her relations; she having been brought there without my knowledge or consent. In fact, for the week previous, I had been absent from the factory in Jessore. The man Mathur Biswas came several times subsequently to the factory, and was in conversation with me, and never said a word about it, or made any allusion to it whatever.

3136. *President.*] Do you think any changes in the system of Indigo planting are requisite in order to induce the ryots to sow as heretofore?—I think I can speak pretty correctly about the feeling of the ryots in the Katchikatta Concern, and changes will be necessary: such as reducing the measuring rope of the land to a lower standard; some of the ryots wishing it to be brought to the Nischindipore, and others to the zemindari standard. I think, also, we shall have to take more of the risk of the cultivation on ourselves, by making advances every year in cash, whether the previous ones are worked off or not.

3137. Do you think you can afford to give the ryots the seed for nothing, and not to charge for stamped paper?—I think these charges should fall on the ryot; but being such a trifling matter, should it come to a matter of sowing or not sowing, we should be obliged to give them up.

3138. Do you think the factory ought to pay the price of carting or boating?—We already do so at Katchikatta.

3139. Mr. *Sale.*] Do you think any more satisfactory way of estimating the quantity of plant given by the ryots, could be adopted?—This year, in the Pubna villages, where the ryots have sown and there is a good crop, on a recent visit, I arranged that two or three head ryots of each village, should, with the *amin* and *takidgir*, make an estimate of what each man had in each bundle. These papers will be handed over to the European assistant in charge; then when the Indigo is brought into the factory, it will be measured as usual, and at the close of the manufacturing, the two accounts will be checked. This was very favourably received by the ryots. They also like the system of giving a vat to be filled by a village, the head man arranging about the distribution of the shares among them.

3140. Mr. *Fergusson.*] Are you experiencing any difficulty now in getting carriage and coolies to work off your plant?—Very great difficulty. Almost all my advances for manufacturing have been made out of the concern. I am also experiencing great loss from these men not keeping their engagements. For instance, about a week ago, 114 coolies came to Katchikatta having received advances of four rupees each, and under an engagement to receive six rupees a month, which is nearly double what they received in other year. I gave them *khuraki*, or something to eat for the day, and sent them to Paikpara; only 46 arrived there or have been heard of since.

3141. Mr. *Sale.*] Have you any reason to believe that the ryots on your estate interfered to prevent these people from keeping their engagement?—I do not think so in this instance, because if forty-six could go, why could not the remainder? But I know of an instance in which one of my own villages threatened to beat the boat people with whom I had arranged for conveying the Indigo.

3142. Mr. *Fergusson.*] Have you met with any instance in which ryots have demanded cash for the plant before they permitted it to be removed from the field?—One Mussulman ryot at Paikpara village proposed to make an average of twenty bundles for each beegah, and to receive one half of the total amount before they would cart it, but he was hooted at by the other villagers, and that village has since been cutting its crop.

3143. Since the departure of Mr. Maclean from Damurhuda, what *distance* is the nearest Magistrate from you?—The Magistrate of the Kurreempore Subdivision is the nearest, which is about 26 or 28 miles distant. The Sudder

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Station is 38 miles from the factory. Commission adjourned at 6 P. M.

INDIGO CASE.

Friend of India, 22nd May 1862.

CALCUTTA SUPREME COURT.

MR. JOHN MC. ARTHUR

versus,

SIR JOHN PETER GRANT, LIEUTENANT-GOVERNOR OF BENGAL.

The *Friend* in a leading article under the heading the "Last Libel Case," thus wrote on the subject:—

"Sir J. P. Grant is before us in a new character—a defendant in an action of libel. A Mr. John Mc. Arthur, assistant to the Manager of the Luckiparra Indigo Factory, is the plaintiff. The alleged libel was contained in a book called "Selections from the records of the government of Bengal, number XXXIII, part III. Papers relating to Indigo cultivation in Bengal." It was in the form of a letter from Mr. Lushington, Commissioner of Nuddia to the Lieutenant-Governor, and contained an expression of belief that the plaintiff had been accessory before the fact to certain lawless acts during the recent disturbances, though there was no hope of securing a conviction for a criminal offence. So far as Mr. Lushington was concerned, this was a privileged communication. But very soon afterwards the alleged offenders in those disturbances were acquitted by the Sudder Court, because the evidence adduced against them was worthless. It was endeavoured to bring home the knowledge of this acquittal to the late Lieutenant-Governor. Of course he had not remained ignorant of the result of a trial which was of interest to a man who more than any one is responsible for the unhappy disturbances out of which it arose. This knowledge however was immaterial, for he was officially and personally responsible for having published this libel without reasonable excuse. The Advocate-General submitted that though it was difficult to bring it within the class of cases as to privileged communications, yet the principle involved in these cases ought to be extended to a libel of this nature. But he did not proceed to show either the necessity or the advantage of doing so. The Chief Justice quoted the rule which had been laid down as to privileged communications. They must be made *bonâ fide* in performance of a duty, or with a fair or reasonable purpose of "prohibiting the interest of the party" using the words. Nominal damages of one rupee were assigned to the plaintiff." (*a.*)

CALCUTTA SUPREME COURT.

BEFORE

SIR BARNES PEACOCK, KT. CHIEF JUSTICE AND SIR MONDAUNT WELLS, KT.

The Prosecution of the Rev. James Long regarding "Nil Durpan." * †

About six months ago, when the Indigo controversy was at its height, a copy of a Bengali drama called the *Nil Durpan* was sent to the Rev. James Long of the Church Missionary Society, who was then out in tents in the Baraset District. The work appeared to represent the Native opinion on the Indigo system, and a desire was expressed by several persons of influence that it should be translated and published.

(*a*) Mr. M. Vencataroyaloo, Telugu Translator in the Petition Department of the Government Office at Madras was dismissed from the public service on the 11th January, 1848, under the orders of the Governor of Madras, for having abstracted public records from the office. He brought an action for libel in the Supreme Court of Madras against Mr. H. C. Montgomery, officiating Chief Secretary to the Madras Government who signed the notification for his dismissal. The case was dismissed by the Madras Supreme Court on the ground that the Court had no jurisdiction in the matter over the local Government. (*Friend of India* May 4, 1848.) *Ed.*

* The *Nil Durpan* was written by Babu Deno Bondhu Miter, and was published from a Dacca Printing Press, and the date of its publication was the 2nd of Asin, corresponding to the middle of September 1860.

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Mr. Long had previously distinguished himself by his zeal and industry in the work of improving the popular Vernacular Literature, and had, on many occasions, called the attention of Government and of others to the immense and growing importance of the *Native Press*. His connection, therefore, with this work was nothing remarkable. He and others regarded it as an expression of Native opinion, and believed that it was necessary that the Indigo question should be judged not solely by the arguments, or in reference to the interests, of the Planters and the papers that espoused their cause, but also with due reference to the *feelings and interests of the cultivators of the soil.*

When the work was translated *at the request* and published at *the expense* of the Secretary to the Bengal Government, about a dozen copies were sent from the Bengal Office to persons in India, and about a hundred and fifty copies were sent home. All these were sent out under the Government frank. This was a grave indiscretion, and the Planters who had been watching very eagerly *took advantage of it.* Their first course was to denounce the drama as infamously obscene, so that they excited a strong prejudice against it, and against those who were charged with putting it into circulation; and then they declared it to be grossly libellous, and thus they checked its circulation. No one, after that, was disposed to give away any copies: and the mass of the undistributed copies appears to have remained in the Bengal office. *Very few* persons therefore have *seen* the work: most men *take it for granted* that it is as foul and as obscene as the *newspapers* represent. But in fact it is not so. The *original* contains many most objectionable passages, but such passages are far too common in all *Oriental* works. Nearly all of these seem to have been *struck out by Mr. Long* from the translation, and very little remains to warrant the outcry. But in the native author's preface there remained a short passage referring to the Newspapers that supported the Planters, and inferring that they were paid to do so.

The landowners' and Commercial Association (in which the Indigo Planters' Association is merged) met, and resolved to pay for an indictment of the printer. This was said to be done as a preparatory measure with a view to indict afterwards those who had employed him. They seem, however, to have thought that, as regards the Planters, there was very little ground for a prosecution, as they used the name of the editor of the *Englishman* as the person aggrieved, and in their Indictment based their principal count on the passage in the preface which we have mentioned. This was certainly strange; for the *license* the local press had taken in discussing the Indigo question was such that nothing more unlikely could be

† Mr. W. S. Seton-Karr, C.S., Secretary to the Government of Bengal in his famous statement published in the *Friend of India* of August, 1861, said that the "drama was translated by a Native with his sanction and knowledge, as some persons were desirous of seeing it in an English form, and 500 copies were printed and sent to the Bengal Office. Out of these 202 copies were sent to England under official frank, and only 14 copies were circulated in India. The Rev. Mr. Long wrote an able preface to this translation and published it in his own name. The Landowners' and Commercial Association, as representing the Indigo planters, and Mr. Walter Brett, the Editor of the *Englishman* who was, along with the Editor of the *Hurkura*, described in the drama, as "having sold themselves, like Judas Iscariot, for Rs. 1,000," first brought a libel suit against the Printer, Mr. C. H. Manuel who was fined Rs. 10 by the Supreme Court of Calcutta. They then brought a libel suit against the Reverend gentleman, which was heard at the Criminal Sessions, presided over by Sir Morpaunt Wells on the 19th July, 1861. The counts of the indictment were these:—

1st. Libelling the Editor of the *Englishman*.
2nd. Libelling the Indigo Planters of Lower Bengal. The Calcutta Grand Jury found a true bill for libel against him. Mr. Long was admitted to bail on his own recognizances and those of the Rev. Mr. Hutton, Presidency Chaplain, and the Rev. Mr. Stuart, Secretary to the Church Missionary Society.

Messrs. Peterson and Cowie appeared for the prosecution, and Messrs. Eglinton and Mewmarch for the defence.

conceived than the appearance of the Editor of one of the *Calcutta papers* as complainant against others. There must have been great mistrust of the other charges against the *Nil Durpan*, or this course of putting forward the *Englishman* never would have been adopted.

The printer on being indicted gave up the name of Mr. Long. Mr. Long never had concealed his connection with the work, and he authorized the printer to say so. Soon after, Mr. Long published the following statement:—

STATEMENT BY THE REV. JAMES LONG.

1. Great publicity having been given to my connection with the publication of a translation of the *Nil Durpan*, I beg leave to submit a brief statement on the subject for consideration. I have to apologise if this statement appears *egotistical*—but it is written in *self-defence*. I have been assailed by name, and with *great virulence*, by the *newspapers that support the Indigo system*; during the last fifteen months, and within the last few weeks I have been threatened with a prosecution for libel by the proprietor of the *Englishman* and by the Planters. I write therefore to explain my true position.

2. During the last 10 years of my residence in Calcutta I have been led by circumstances to take a very deep and active interest in that which has excited much attention of late in England—the *Vernacular Press, as an exponent of the views and feelings of the masses, and as a medium for working on those masses for their improvement.* I have also been in connection with the Vernacular Literature Society during the last eight years, as well as with the great cause of Vernacular Education.

My peculiar position in Calcutta has brought me more in contact with the native press than other Missionaries and this has led me as a member of the Christian School Book and Vernacular Literature Societies, to compile three volumes in Bengali of Selections which I made from the native press. I have also had to examine various Bengali manuscripts, and to edit works.

While occupied in this manner, my duties to the south of Calcutta and itinerant work in other districts have brought me into close intercourse with the *agricultural* population and have *forced* practically on my notice their wants and woes. I have there a class of teachers and readers whom I am educating through the *Vernacular*; for these I must provide mental food; and thus my Missionary position, as well as my intense conviction of the paramount importance of a sound indigenous literature, has compelled me to attend so much to Vernacular publications.

I have reason to believe that my humble efforts in this cause have not been without success, and I have been much encouraged by letters received from Missionaries, Civilians and intelligent natives on this subject. In fact at the present time it is evident, there is a wide and increasing sphere of usefulness in working the native press. I have been frequently applied to by Rajahs and others to send them a collection of useful Bengali books for libraries, and in many other ways I have laboured to make known the resources of the native press.

3. I have never received, nor would I take from Government or any other party, one cowrie as pay for services in this way—looking on them as part of my work—as a branch of Missionary literary work. Government, however, have encouraged me by publishing some of my reports on the Native Press. In 1855, they published in the Selections of the Bengal Government my "Return of Authors and Translators in Vernacular Literature, &c.," of this 800 copies were printed by the direction of Sir F. Haliday; and of my "Classified Catalogue of 1,400 Bengali Books and Tracts" (which was also published in 1855) 300 copies were subscribed for by Government, so that the work paid its expenses. Of my Returns relating to the Vernacular Press in 1859, Government also published 500 copies, I have reason to know that these have been of

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use to the friends of Missions and of Education in India, England, and even in Germany, and they have called that serious attention to the subject of the native press.

4. At my suggestion, the Hon'ble Mr. Beadon, when Secretary to the Bengal Government, issued orders requiring *annual returns* of the Vernacular publications in Bengal. I strongly urged on Sir F. Haliday, when Lieutenant Governor, the appointment of a *curator of the native press* to supply full information respecting its progress; a proposition that met his full concurrence and was only rejected by the Supreme Government on financial grounds. In my examination of native books I was struck with the open way in which *obscene* books were sold, and the number that were thus put in circulation in Calcutta. I therefore brought the subject before the Legislative Council, and a law was passed on the subject, which has worked well in this city. A Bengali *Education Gazette* has also been established, and I had much to do with the procuring for it the pecuniary support of Government. This has proved a very useful means of diffusing sound information among the native population.

The constant activity of the native press has led me to urge on Christian men in every way, both by pen and word, the pressing need of a Christian Vernacular Literature, and of Vernacular Education. An appetite for knowledge is arising, but the people must have healthy food. It may be said, why should a *Missionary* meddle with these things? The simple answer is, that there appeared to be scarcely any one else who took sufficient interest in them, and few who had from circumstances such facilities as I had for gaining information. I should have been very thankful if a layman had been available to relieve me of such duties.

In connection with this subject, when new vernacular books of special interest appear, I am in the habit of sending them as *indices of the native mind* to Missionaries, Educationists, and Government Officials, without reference to the *correctness* of the sentiments of the works, in order that such persons may observe the *current of popular feeling*. Thus, two clever works in defence of Hinduism appeared about two years ago in Calcutta. I sent notice of them, and nearly every Missionary in Calcutta purchased copies.

Six years ago the late Court of Directors sent orders to Calcutta to provide for the India House Library copies of all original publications in Bengali. I was asked to procure them, and I did so. It is only a fortnight ago since, at his request, I sent to Professor Williams, the Boden Sanskrit Professor of Oxford, copies of all Bengali translations of Sanskrit texts. I have had books sent, in the same way to Benares, Midnapur, Burdwan, and various parts of Bengal.

5. With the same view of *making known the tendency of the native mind*, I have inserted from time to time in the *Hurkura* newspaper, articles called "the Spirit of the native Press," and with *the same object* I brought to the notice of several parties, last year a Bengali Drama called the *Nil Durpan*, which *though highly coloured*, appeared to give the *Native* view of the *effects* of the Indigo Planting system. The dispute had hitherto related to the opinions of Civilians, Merchants and Missionaries, but some were anxious to know the tone of the native press on the subject. The work was already in circulation among the Native population, and *several persons expressed a desire that it should be translated, for the information of those to whom it was of importance to understand native feeling.* It was as an *illustration of native feeling*, and not for the purpose of controversy, that attention was attracted to this publication; but of course in a work like this Drama, which, as stated in the Introduction, is avowedly published *to depict the Indigo system as viewed by the Natives at large*, there are statement and passages which the purer and more refined taste of an European would reject. Every man, however, who

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is acquainted with Oriental literature, knows how prominent these defects are in many Oriental works of high reputation. In the *English* translation of the *Nil Durpan*, the *coarser passages were expunged or softened*, and I regret that any that have given offence should have been inadvertently allowed to remain. But any one who will take the trouble to examine the original will find that a good deal has been omitted. With reference to the passage in the native author's preface as to two newspapers, insinuating that they were under the influence of the Planters, I never could have imagined that any English reader would attach importance to the imputation. The insignificance of the sum mentioned as the incentive, (a thousand rupees or £100,) seemed to exhibit at once the folly of the charge as applied to newspapers of wide circulation.

That my motive in undertaking to pass the translation through the press was not malevolent, may be inferred from the conclusion of the introduction written by me. "It is the earnest wish of the writer of these lines that *harmony may be speedily established between the Planter and the Ryot*, that mutual interests may bind the two classes together, and that the European may be in the Mofussil the protecting Ægis of the peasants, who may be able to sit each man under his mango and tamarind tree, none daring to make him afraid." I would also refer to my evidence given before the Indigo Commission in which I admitted the improvement of late years in the character of the Planters and expressed my view, that the controversy should be confined to the evils of the *system*.

6. I myself believe thoroughly in the truth of Lord W. Bentinck's maxim "India must be managed at present by Native agency under European Superintendence." But in order to maintain that European superiority, and on the principle of *fas est ab hoste doceri* I believe it would be most useful for European of *all classes* to see themselves now and then in the mirror of the Native Press. Lord W. Bentinck thought so, when he allowed its criticisms on himself and his administration, —"Considering it was an index and safety value for the public mind." So did the Marquis of Hastings when in 1818, he patronised the Serampur *Darpan*, by allowing it to circulate for one-fourth the ordinary postage. That paper was under Missionary management and often contained extracts from Native papers freely criticising Europeans and Government. I remember, reading in old numbers of that paper, translations of most bitter satires from the *Bhaskar* and *Chandrika*, one part of which represented an English *Judge drinking brandy on the bench*, and speaking a language none could understand, while his amlahs were busily engaged receiving bribes. The late Rev. W. Morton, a Missionary, frequently made translations from the Native newspapers, giving extracts *hostile to Missionaries* and others. I was requested three years ago by the Missionary Conference of Calcutta, to compile a tract giving the opinions of the Native Press for and against Christianity, in order that Missionaries might know the real state of the Native mind.

That this regard to Native opinion is not inconsistent with a *zealous support of British interests*, may be proved by a reference to the Hon. F. Shores' most valuable "Notes on Indian Affairs." No one more boldly advocated the settlement of Europeans in India thirty years ago than he did, and no one more ably pleaded for their services being used by the State as Justices of the Peace, yet few men ever dwelt more faithfully on the effects produced on the Native mind by *the misconduct of his countrymen*.

7. It is said that to meddle with such subjects as Indigo is not consistent with the character of a *clergyman*. I would ask, is not the preservation of *peace* in India one of his duties? Here in this Country is a small number of Europeans in the midst of a vast body of Natives. Few of the former know

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anything of the Native language, or of Native feeling; a volcano may be forming beneath their feet, and dark clouds may be gathering on the horizon of India. Is the *watchman* then who gives warning to be counted an *enemy?* If a clergyman known of a state of Native feeling that may *end in bloodshed*, is he to give no *information* of it? It is admitted that in the Indigo district there *was* and *is* state of feeling of this sort. How is it to be brought to the notice of officials and men of influence, to put them on their guard? Surely the Native press will indicate what is going on beneath the surface, and is one of the safest guides to genuine Native opinion. I solemnly declare that I know nothing more important for the future security of Europeans in India and the welfare of the country, than that *all* classes of Europeans should watch the barometer of the Native mind. I feel strongly that *peace founded on the contentment of the Native population* is essential to the welfare of India, and that it is folly to shut our eyes to the warnings the Native Press may give. The late Hon'ble J. Wilson felt that the views of the Native Press were deserving the notice of even the highest authority, for he organized as an essential part of his official establishment, the office of a *paid translatorship* which supplies the authorities by means of translations, with the views of the native press in Bengali, Urdu, Persian, Tamul, &c., on Government Financial measures.—I have lately read in those translations some bitter philippics against Government measures. The Bombay Government obtains information respecting the native press from the Persian Translator's Office, and I have reason to believe that ere long similar measures may be sanctioned by the Government of India for Bengal. The Lieutenant-Governor in his recent letter to Mr. Fergusson, Secretary of the Indigo Planters' Association, says referring to this *Nil Durpan*, "How can the knowledge of respectable officials of other European gentlemen of the existence of such indications of popular feeling as this, be anything but a security against actual sedition and breaches of the peace?" Well would it have been for India had the mutterings of the native press been earlier attended to before the *mutiny!* They were neglected and men *slept quietly over the brink of a volcano. Had translations been made from the native press of the Agra Presidency indicating the state of feeling towards Government a year before the mutiny, and had these been communicated to official and other influential persons, it is possible that Europeans might not have been taken so unawares with all their arsenals in sepoy hands.* I was in the Agra Presidency a few months before the mutiny, and was much struck with the contempt with which influential parties regarded any indications of native opinion as expressed by the native press. Similarly in 1853 when exploring the lanes and gullies of Delhi, in search of Vernacular books, I was impressed with the prodigious activity of the Moslem mind, and I left Delhi with the intense conviction that the *combustible* materials were gathering and only required the *match* to be applied by them.

8. A Missionary is pledged—in fact it is his work—to rear an indigenous Christianity. I have seen with deep sorrow how much of our Mission work in Bengal, is still too much of a *hotbed system*, maintained at a *heavy cost by the funds of foreigners.* Christianity has as yet made comparatively little way among the population of Bengal. In my own observation and experience one of the most prominent causes appears to be the mental, moral and social degradation of the ryot; and here I must reiterate what I wrote in the Introduction to the *Nil Durpan.* "Attention has of late years been directed by Christian Philanthropists to the condition of the ryots of Bengal, their teachers, and the oppression which they suffer, and the conclusion arrived at is, there is little prospect or possibility of ameliorating the mental, moral, or spiritual condition of the ryot without giving him *security of landed tenure.* If the Bengal ryot is

to be treated as a serf, or a mere squatter, or day-labourer the missionary, the schoolmaster, even the Developer of the resources of India, will find their work like that of Sisyphus—vain and useless. Statistics have proved that in France, Switzerland, Holland, Belgium, Sweden, Denmark, Saxony, the education of peasant, along with the *security of the tenure*, he enjoys on his small farm, has encouraged *industrious, temperate, virtuous, and cleanly habits, fostered a respect for property, increased social comforts, cherished a spirit of healthy and active independence, improved the cultivation of the land, lessened pauperism, and rendered the people averse to revolution, and friends of order. Even Russia is carrying out a grand scheme of self-emancipation in this spirit.*"

It was the conviction that certain *social evils were great obstacles to the diffusion of the Gospel*, which led the Church Missionary Society and its friends to take an active part in promoting the abolition of the slave-trade in the West Indies and West Africa, and in the protection of native rights in New Zeland, and which induced the Baptist and Wesleyan Missionary Societies to wage a crusade against West India Slavery, though their Missionaries were imprisoned by the Planters in Jamaica and other colonies. The same views have led Christian Churches in America to raise their voices against slavery.

9. While I regret that through *inadvertence* remarks by the *native* author at which offence has been taken, were allowed to remain in the preface of the *Nil Durpan*, I am thankful that there is little likelihood of a recurrence of similar inadvertence in connection with individual European responsibility, as I trust that ere long the Government will have one of their own servants employed with a suitable establishment for the purpose of keeping the authorities acquainted with native opinion in its bearings on general questions. But while I regret the publication through *inadvertence* of any expressions or passages that have given offence, I must be allowed to add, that it does seem strange that any complaints on this subject should proceed from those *Calcutta newspapers* that have supported the Indigo system, or from the Planters who circulated "Brahmins and Pariahs,"—for I think that I may appeal to any man who has resided here since the beginning of 1860, and ask if he remembers in the *annals of modern controversy, greater virulence and bitterness than the organs of the Planters have exhibited in their repeated attacks on the Government, the Missionaries, and those officers of Government with whose measures they have been dissatisfied.* I might append to this statement numerous most *violent and acrimonious extracts* from those papers, and leave all candid men to judge if the liberty of the press has not been abused, and if *native writers have seen in their European cotemporaries any example of moderation.* In my own case and in the case of Mr. Bomwetsch, some of our friends wished actions for libel to be instituted, but we have been content hitherto, as the officers of Government have been, to bear the revilings of those journals *in silence.*

10. It has been alleged that I vouch for the *entire* truth of *every* statement in the Drama. I do nothing of the kind. I never meant to do it. The case of a respectable ryot, or peasant proprietor, happy in his family till the Indigo system compelled him to take advances, and that case alone, is declared to be pointed out in language plain but true. Even this limited statement was not meant to be taken without any exception. All that was intended, all that ought fairly to be deduced, is that in many instances, according to general opinion, and popular report and belief, the effect of the Indigo system on native families has been as ruinous as the Drama represents. Such or similar representations being everywhere current and believed among natives, they ought not, whether such representations are entirely true or only partially so, to be trifled with or concealed by any who desire *the peace and welfare of the people*

of this land, or their own safe residence and continued prosperity in it.

J. LONG.

CALCUTTA, *June 20th, 1861.*

It is well known that on the appearance of this statement, most moderate men in Calcutta, including not a few of the merchants, and even some members of the Landowner's Association, *wished the prosecution to be discontinued.* But the counsels of the *more violent* prevailed, and on the 19th July, the Supreme Court beheld "its first State trial." So it has been called. The Government and the Civil Service, wildly as they have been assailed, have never attempted to prevent discussion either by criminal or civil proceedings. It was reserved for those who, if they had ever been indicated for libel, would have raised an indignant shout of defiance and derision, to introduce into the Courts of India the process of an indictment for libel: and they did so with every advantage. The law has been so amended at home that a defendant may justify himself by proving the truth of his statements: there is *no such law in this country.* The Landowner's and Commercial Association had it all their own way, and were able to enact one of those scenes which most men believed to have *passed away for ever with the domination of Lord Eldon.*

Prior to the trial, however, several of the principal Natives presented to Mr. Long the following address:

TO THE REVEREND J. LONG.

SIR,—We, the undersigned, have perused with attention the Statement, which you have lately published, explanatory of your connection with the *Nil Durpan*, a work of fiction, illustrative of the feelings of the people of Bengal, on the subject of Indigo Planting, as carried on in this part of the country.

The part which you have for years together taken in the advancement of Vernacular Literature and in the dissemination of the views and feelings of the Natives on topics of administration and social improvement, *as reflected through the medium of the Vernacular press*, has justly entitled you to the gratitude of all classes of the native community, notwithstanding the difference of religious sentiment between you and them; and we believe the cause of good government has been not a little furthered by your industrious application in bringing those sentiments and feelings to the knowledge of the governing Authorities, and the local European Public.

Constituted, as the British Indian Government is, it is needless for us to dwell on the importance of consulting in matters of legislation and administration, native opinion and feelings expressed in whatever form and through what medium soever, but we beg leave to state that we fully endorse your opinion that "*peace founded on the contentment of the native population is essential to the welfare of India, and that it is folly to shut our eyes to the warnings the native press may give.*"

We are persuaded, Sir, that the part you have taken in carrying through the press the translation of the *Nil Durpan* has been in perfect accordance with your cherished convictions as to the importance of enlightening the *European* mind here on the contents of the *Vernacular* Press, and we have therefore observed with pain and sorrow the bitter personal controversy in the newspapers to which your laudable efforts in this direction have given rise.

That the *Nil Durpan* is a *genuine expression of Native feeling on the subject of Indigo Planting we can with confidence certify.* We are aware that there are passages in the original put into the mouths of females and others, which may grate on the ears of men of cultivated taste, but such passages only express the thoughts and ideas *current in the order of society painted in the work.* If, however, an occasional indelicacy of expression should be a reason for the suppression of a work of fiction, we fear the most ancient and the best classics of our land, which are so justly valued all the world over, would remain sealed from public view; and, judged by the same standard, there are not a few of the master-pieces of European genius, both ancient and modern, which would suffer from the ordeal. We, however apprehend that the open censure with which your effort has been visited is simply the result of an interested and factitious opposition.

We have deemed it due to put you in possession of this expression of our opinion on this important question, in the belief that it may be the means of correcting the wrong impression which we have been sorry to find entertained, *viz.*, that the native community do not consider the *Nil Durpan* as an embodiment of popular feeling, and that they do not appreciate the motives which actuated you to bring its contents to the knowledge of the European public. *Nothing could be more mistaken than this*, and we do sincerely trust and hope that this letter

will remove the misapprehension so much to be lamented.

We have the honor to be,
Sir,
Your most obedient servants,

(Sd.) RADHAKANT, RAJA BAHADUR,
RAJA KALI KRISHNA BAHADUR,
RAJA NARENDRA KRISHNA,
BABU RAMANATH TAGORE,

And forty-three principal Natives of Calcutta.*

The trial was conducted fairly enough by the counsel for the prosecution. He had no difficulty in proving, what Mr. Long had *never denied*, that he had published the work, and had caused it to be distributed to many persons whom he believed to be deeply interested in the condition of the people of this country. We will not comment on the charge of Sir Mordaunt Wells, except to notice one point. He told the Jury that he would not pronounce whether the work was a libel or not, but *state the law* and leave that question entirely to them; yet he went on *in terms*, and in a *manner rarely witnessed on the Bench, to denounce both Mr. Long and the work.* He spoke of the latter as a "foul and disgusting libel." and used other similar expressions. The chief passage that he dwelt on was dealt with by the Chief Justice in deciding a point of law on the 24th. We quote from the *Hurkura*, which, in this instance, gives one of the passage quoted by the Judge; but, for the most part, the *public* have *been left in ignorance of the extracts of the work* quoted in the indictment and by the judge. The particular passage we now refer to mentions a European lady:—

Now the second count found by the jury is that the publication was intentional, that is, it was malicious, written and published for the purpose of lowering them in the estimation of the public and society. (His lordship here read an extract from the publication). Does this not show that the Indigo Planters as a body had exercised an improper influence over the Magistrates, to induce them to give decisions contrary to law? Now what would be supposed if one of the Judges of this was said to have acted in that way? It appears to me that this passage is sufficient to support either of the two allegations, and to be capable of such an interpretation as to bring the Planters into disrepute. Mr. Eglinton, I think, has scarcely argued in respect to the first part of this allegation, whether the words in this libel were sufficient to cast an imputation on the whole body of the Planters. And it is not necessary for the Court to say whether the words are sufficient to bring the Planters into discredit. Now the first part of this libel has been referred to by Mr. Eglinton as being obscure. It is set out in page 66 of the pamphlet, and I will read it.

"*Darogah.*—Did not the Magistrate say, he will come here this day?

"*Jamadar.*—No, Sir, he has four days more to come. At Sachigunge on Saturday, they have a Champagne-party and ladies' dance. Mrs. Wood can never dance with any other, but our Saheb; and I saw that, when I was a bearer. Mrs. Wood is very kind: through the influence of one letter, she got me the Jamadary of the Jail."

That is the wife of Mr. Wood, and through her influence the bearer got the Jamadari-ship of the Jail, and the Magistrate was the only person with whom she would dance, and that in consequence of the Champagne-party probably the Magistrate would not come. Now, whether this would lead fairly to the inference that Mrs. Wood would improperly influence the Magistrate, is a question which the Jury have already decided. Mrs. Wood is the character in the play, and is described as the wife of an Indigo Planter. But it is said that this does not mean a Planter's wife, and still he is asked to look into this mirror and see his reflection. It must therefore be taken that it is one of the Indigo Planters, and that it means to impute a general course of conduct to the whole body, and that they did by such means exercise an

* A subsequent address was sent in signed by 30,000 natives.

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undue influence over the Magistrates of the districts. In my opinion it is incapable of bearing any other interpretation. Supposing it was published that the Judges of this Court had, when a suit was pending, received such a letter from one of the litigant parties, would it not be said that an improper influence had been exercised over them? Are not Magistrates in the country entitled to the same protection as this Court? It appears to me that it is doing as great an injustice to the Indigo Planters to say that they used an improper influence over the Magistrates through their wives, as it would be to say that the Judges of this court had, while suits were pending, received such a letter from one of the litigant parties. Then the question is whether there is anything in the libel to show that any imputation, independent of that influence over the Magistrates, had been cast to bring into contempt the administration of Justice in the mofussil."

The Chief Justice, it will be observed, treats this passage as imputing *undue* influence and *nothing more;* but Sir Mordaunt's imagination coloured it, till he found himself able to represent to the Jury that the wives of the Planters generally were charged with the worst offences, and on this subject he commented in very violent language.

We may leave our readers to judge if it be not true that the natives do misunderstand the friendly and familiar intimacy which exists between the sexes in Christian Society; and if it be just to impute an intention foully to libel our countrywomen, to every one who republishes a native work in which this misunderstanding appears? If Sir Mordaunt's rules are to be adopted, *no native works should be published for the information of the European community, till every thing characteristic of their native origin is carefully eliminated from their pages.*

After an argument by Mr. Long's counsel in arrest of judgment, Mr. Long read the following statement:—

ADDRESS OF THE REVEREND J. LONG TO THE COURT BEFORE SENTENCE WAS PASSED.

MY LORD,—As the result of this trial involves *consequences* extending far beyond the sphere of Calcutta, or even of India, I beg to submit, for your Lordship's consideration, the following points referring mainly to the motives which actuated me in publishing the *Nil Durpan*:—

Tried by the mode of a *criminal* prosecution, in Court, I had no opportunity to make a personal statement to the Jury. I can only state, previous to your passing sentence, what is personal to myself as to the *motives* which actuated me to publish the *Nil Durpan*, on the grounds of my being a Missionary,—an expounder of native feeling as expressed in the native press,— a friend to securing peace for Europeans in the country—and a friend to the social elevation of the natives.

My Lord, it is now more than twenty years since I came to India. During that period, I have never appeared in a Court of Justice as plaintiff or defendant; my occupations have been of a very different character, and my time has been spent chiefly among natives, engaged in vernacular teaching, in the charge of a body of Native Christians, and in the promotion of Christian vernacular literature. These pursuits, along with my interest in the rural population, called my attention to the *vernacular press* of India, its uses and defects, as well as its being an exponent of the native mind and feeling. It is in connection with the latter branch of my labours, that I appear here to-day as publisher of the *Nil Durpan*, which I edited with the view of informing *Europeans of influence*, of its contents, as giving *native popular opinion on the Indigo question.* The work, (the English translation I mean) was *not got up at the suggestion of natives,* or even with their knowledge, and was not circulated among them. It was commenced at the request of others. Many of the

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remarks of Mr. Peterson, the Council for the prosecution, are strongly in my favour, because if, as he stated, the work was so injurious in its *vernacular* dress, was I not doing a public service by making such a work known in *English?* But not in Calcutta, where it might only *lead to more bitter controversy, and where men's interests are so concerned, that all representations would have been useless, producing irritation not conviction* I circulated it chiefly among *men of influence in England* and those connected with the British legislature, which, to the oppressed of whatever colour or country, has always afforded sympathy and redress. I have aimed for the last ten years in my *leisure hours* to be an exponent of native opinion in its bearing on the spiritual, social, and intellectual welfare of natives of this land; as, for instance, when applied to on the part of the Court of Directors seven years ago, to procure for their Library, copies of all original works in Bengali or as when lately, I sent to Oxford, by request, copies of all Bengali translations from the Sanscrit; or, when I have procured for missionaries, Government, Rajas, &c., vernacular books of all kinds—I should have been a strange person, indeed, had *my opinions* harmonised with *all the chaos of opinion, in those various publications.*—Why, at the request of missionaries I have procured anti-Christian works for them, as they wished to know what was written *against* Christianity.

I am charged with slandering English women in the *Nil Durpan.* Now, waiving the point that it is only planters' wives the native author refers to—*I myself believe planters' wives are as chaste as any other females of English society in India*, and it was my impression that even putting the *worst* construction on the passage the author only referred to some *exceptional* cases, not giving them as specimens of a class of females. The view however that I and others who know oriental life, have taken of this part relating to females is, that it gives the *eastern notion of the high indelicacy of any woman who exposes her face in public, or rides out in company with a gentleman.* I have heard such remarks made of my own wife; but I treated them as a specimen of village ignorance. Sir J. Shore in his "Notes on Indian Affairs," states instances of a similar kind, and Lieutenant Burton, who went disguised as a pilgrim to Mecca, mentions the greatest reproach the pilgrims there made against the English was, that *they shook hands with their neighbours wives!*—I regret, however, I did not append a note of explanation to this part.

I hold in my hand the first drama ever translated, and that by an illustrious Judge of this Court—Sir W. Jones, in order to give a view of Hindu society. Similar service was rendered by Horace H. Wilson, by Dr. Taylor, and various other persons. I beg to say I was far from wishing to vilify planters generally, though from *sincere conviction and enquiry opposed to the Indigo system.* Thus, when summoned before the Indigo Commission, my evidence there was considered even by the planters' friends as moderate and free from invective. I was elected a member of a sub-committee of the Calcutta Missionary Conference to watch the progress of the Indigo controversy, and it was never objected then that any of my actions in connection with the Conference on this subject, were for the purpose of vilifying. I have never lived near planters, nor have I had any personal altercation with them, that would lead me to a *vindictive* course.

I ask, when hundreds, yea thousands of Bengali books were submitted by me during the last ten years to the *notice of Europeans of influence, was the Nil Durpan to be the only exception?* And wherefore? The ryot was a *dumb animal* who did not know his rulers' language. And at the time of this *Nil Durpan* appearing matters on the Indigo controversy were assuming a *threatening* aspect; so it was important that man of influence should know that the *wound was not a surface one, but required deep probing.* Could I,

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as a *clergyman*, have withheld a work of this sort which indicated some of the causes of the deep-seated aversion of ryots to Indigo cultivation? This work, the *Nil Durpan*, was sent to me as hundreds of vernacular books have been, because it is known in many quarters that I take a deep interest in vernacular literature. Here is an illustration; these two vernacular books were sent to me a few days ago from Benares—one Robinson Crusoe in Hindi, the other a Choral Book in Urdu. Almost every week I receive new vernacular book, and make a point of bringing them to the notice of Europeans; on various grounds. Sir F. Haliday honored my "Reports on the Vernacular Press" by publishing them; so did the present Government in the case of publishing my sketch of Vernacular Literature; so did the Vernacular Literature, Religious Tract, and Christian Tract and Book Societies shew their confidence by publishing various works of mine.

I will now state the grounds why, as a clergyman opposed to war, I published the *Nil Durpan*. My Lord, four years only have elapsed, since Calcutta was waiting in trembling anxiety for the result of the mutiny. Few could look with calmness on the future, while watch and ward were kept all night by the citizens. Many felt then, as I had long felt before, how *unsafe* it was for the English to reside in India in ignorance of and indifference to the *current of native feeling*. The mutiny, in common with the Affghan war, had showed the English in India were generally unacquainted with it; so, a short time previous to the mutiny, the Sonthal war burst out unexpectedly to the public. For a long period were not thuggee and torture prevailing in India, without the English knowing any thing of them? Had I, as a missionary, previous to the mutiny, been able to submit to men of influence a native drama, which would have thrown light on the views of sepoys and native chiefs how valuable might the circulation of such a drama have proved, although it might have censured severely the treatment of natives by Europeans; the indifference of sepoy officers generally towards their men; and the policy of Government to Native States! Such a drama might have helped to save millions of money and torrents of human blood. In Cabul, the authorities, through a false security, founded on ignorance of native opinion, entailed a loss of fifteen millions sterling on the State and the damage of England's prestige. *Has Calcutta forgotten the lessons taught by the mutiny?* I ask, was it very malicious to *reveal to the governing race the latent current of native thought* and feeling on the subject of Indigo, which was convulsing the whole country, and threatening it with anarchy, incendiarism, and assassination? Would I have been justified to withhold contributing my mite at such a crisis to the great object of rousing men of influence by shewing them, from a *native* source, that the dissatisfaction was deep-seated, and that the wound must be thoroughly probed before healing measures could be efficacious?

My Lord, the *mutiny* has passed away; who knows what is in the future? And as a clergyman and a friend to the peaceable residence of my countrymen in India, I beg to state the following as a motive for my editing such works as the *Nil Durpan*. I, for years, have not been able to shut my eyes to what many able men see looming in the distance. It may be distant, or it may be near; but *Russia and Russian influence are rapidly approaching the frontiers of India*. Her influence, so manifest in Cabul twenty years ago, as shown in a recent Parliamentary Blue Book, was beginning to be felt in India during the last mutiny. Now she goes on the principle of *divide et impera;* previous to invasion she gains over the *native population* in various countries to her side. Could I, then, as a clergyman have watched with apathy measures like those in connection with the Indigo system which were *furthering this Russian policy*, and which might lead to *war and dissensions* that would retard

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for a long period the progress of religion, education and peaceful commerce; I now speak merely my honest convictions on this point; and I ask *if* this conviction has any foundation in reality as also *if* there be any ground for another as deeply rooted in my mind;—that *mere armies* can no more secure the English in India than they established the *Austrians in Italy*. Would it not be my duty as a *clergyman* to help the good cause of peace, by shewing that the great work of peace in India could be best secured by the *contentment of the native population, obtainable only by listening to their complaints as made known by the native press and by other channels.* I pass over French views in the East, but I say, *forewarned is forearmed*, and even at the expense of *wounding their feelings* in order to *secure their safety*, I wish to see the attention of my countrymen directed to this important subject.

As a *missionary*, I have a deep interest in seeing the faults of my countrymen corrected; for after a residence of twenty years in India, I must bear this testimony—that, of all the obstacles to the spread of Christianity in India, one of the greatest is the *irreligious conduct of many of my own countrymen*. Thousands of natives have said to me, "We judge of the Christian religion by *what* your countrymen *do*, not by what they *say*; by the *life*, not by the *doctrine*." For twenty years I have, as a missionary, been in close and confidential intercourse with natives of all classes. Often and often has my spirit been harrowed and almost crushed by a close view of the condition of the ryot, his want and his sufferings; shut out from that ability to read, without which the pages of inspiration are locked up to him. I can see in the improvement of his *social condition a means of enabling him to enjoy the light of knowledge*. I have circulated many pamphlets in England, on "The ryot, his teachers, and torturers", and on the evils resulting from the ryots not having a sound vernacular education. When I have not shrunk from exposing many social evils to which the ryots is subject, I beg to ask, *could I have avoided, in my position exposing his sufferings for resisting the Indigo system?*

The Chief Justice here stopped Mr. Long, stating that the Court were willing to hear anything that he had to address to them in his defence. That it was not the length of the matter he was now reading, but its substance they objected to, as irrelevant. The remainder we give as from the MS. prepared by Mr. Long:—

Influential men in England have deeply sympathised with me on these points, and have said "You and others that expose those recesses of human suffering and degradation must let us know the results," and I have been, my Lord, amongst those masses for years, and hope, as long as I live, and have a brain to think and a pen to write, to advocate the social elevation of the masses as incidental with the progress of mental and moral light. Should I not have been a traitor to the religion I professed, whose great Founder's motto is, "The poor have the Gospel preached to them," had I not availed myself of all legitimate opportunities to bring the wants and sufferings of the ryots, and the feelings and views of natives generally to the notice of men who had the power of remedying them? It may be called too *political* a course, as some now unduly restrict that term; but Christianity itself is political in the extended sense; for in the early ages it assailed the slavery of the Roman Empire; in the middle ages it afforded an asylum to the serfs against the oppressions of the feudal chiefs; at the period of the Reformation it brought freedom to the peasant's home; and in modern days it has abolished slavery in the West Indies: it has protested against American slavery, and is now throwing its mantle of protection round the aboriginal tribes throughout the world. In 1856, I delivered an address in Calcutta to the friends of Missions on "Peasant degradation an obstacle to Gospel propagation."—No one then objected to that address on the ground of its being

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political.

My Lord, I am sustained in this course by the convictions of, I trust, an enlightened conscience, and confidently relying on the continued sympathy of many friends both among the European and native community, and of all in India and Great Britain, who desire to see India governed, not merrily for the advantage of its *fluctuating population from Europe*, but for the benefit of, and with considerate regard for, the feelings and interests of the 180,000,000 natives over whom stretches the *Ægis* of the Queen and parliament, I know I shall have the sympathy of good men the friends of the natives in India and in England, and of all those throughout the world who believe in the indissoluble connection of spiritual and intellectual improvement.

My Lord, a Court of *Law* has decided that the work is a libel, and it is my duty to submit to that verdict and *to act accordingly*. My conscience convicts me, however, of *no moral* offence or of *any offence deserving the language used in your Lordship's charge to the Jury*. But I dread the effects of this precedent. This work being a libel, then the exposure of *any social evil*, of cast, of polygamy, of Kulin Brahminism, of the opium trade, and of any other evils which are supported by *the interests of classes of men*, may be treated as libels too, and thus the great work of moral, social and religious reformation may be checked.

My remarks are ended, My Lord.

Then followed Sir Mordaunt Well's sentence in the following terms :—

The sentence of the Court is, that you pay a fine of Rs. 1,000 to our sovereign Lady, the Queen, and that you be imprisoned in the Common Jail of Calcutta for the period of one Calendar month—and that you be further imprisoned till the fine is paid.

In the course of his charge to the Jury, Sir Mordaunt thought it not unbecoming to comment on the address which we have quoted to Mr. Long, though it was *in no way before the Court*, and in his judgment, he could not refrain from an *attack on the Government, without waiting to hear what it had to allege in explanation.*

The fine imposed on Mr. Long was at once paid by Baboo Kali Prosono Singh, and we hear on good authority that there were many other native gentlemen in Court anxious to be followed to render that service to the defendant.

The next day Mr. Long was applied to, to ascertain if he would consent to a petition being sent to Government by the native community for a remission of his imprisonment, but he stated that it might embarrass Government and that he should prefer the matter being allowed to rest. And this was his wisest and most proper course. It is well to suffer as a Christian; "for this is thankworthy, if a man for conscience toward God endure grief, suffering wrongly." (1 Peter ii. 19.)

The amount of native sympathy this case has evoked is very remarkable. Mr. Long is well known to the native community as having been engaged for many years in various works for their benefit, and as a man animated by a warm desire to ameliorate and to elevate the condition of all classes. It is most shamefully imputed to him, day after day, by one of the papers, that he is a retailer of obscene native publications, whereas the fact is, that he has for several years been an indefatigable member of the Vernacular Literature committee that was established by Mr. Drinkwater Bethune, Mr. John Colvin, Mr. Hodgson Pratt, Mr. Wylie, Mr. Samuels, Mr. Townsend and others, expressly to purify the native literature, and which has succeeded in putting into circulation many popular works of the soundest character. Mr. Long's "Statement" on this subject ought to silence his assailants. It was he, as he in that statement shows, who applied for and obtained the enactment of the law for the suppression of the sale of those vile works that were once so commonly hawked about the streets of Calcutta.

But the policy of the planters and

their organs in this whole controversy, seems to have been to *overwhelm every one who has resisted them with public odium*, and Mr. Long has been a chief object of their malice.

We shall not indulge in many further comments on this case, but there are some other points that call for observation.

Mr. Long himself stands before his brethren as he ever has done—a bold, faithful, benevolent man; most enthusiastically engaged in promoting the welfare of the people of Bengal, according to his own view of their wants; and most sincere, upright, and faithful in all his Missionary labours, and in his character as a Christian minister and a Christian man. There may have been points on which we have differed with him. We may have sometimes doubted the accuracy of his information and the soundness of his judgment. But there have been many other occasions on which we have admired his intuitive perception of great principles, his untiring zeal, his single-hearted labours, and his sterling worth. He is well known beyond the limits of Calcutta, and his name will be well remembered, and will be honored ever here in this scene of his present punishment, when all the excitement of this Indigo controversy has passed away and is forgotten.

Next, as to the effect of this prosecution; the Planters think they have *gained a victory*. They may be assured that nothing has occurred, since their system was first commenced in this country, more calculated to destroy their influence. It is useless to look for a *dispassionate* judgment on the question from any in *this city*, who are involved in the vortex of discussion, or from any whose interests are at stake. But the spirit manifested in this prosecution will be noticed out of Calcutta. In other parts of India, in Great Britain and in United States, Mr. Long's case will be taken as involving much more than the Planter's perhaps intended. It will look like an attempt to suppress all freedom of discussion. It will prove the weakness of the Planter's cause. *It will arouse suspicion that Anglo-Saxon dominance, for which some so zealously contend, would mean nothing less than arbitrary government for the benefit of the European settlers, with a total indifference to the sentiments and feelings of the great native population.* Mr. Peterson in his speech for the prosecution made a most unfortunate allusion. He warned the Missionaries (whom he denounced as mischief-makers) by the example of Mr. Smith of Demerara! He instanced him as one who had *incited* the slaves to disaffection, and had *suffered the extreme penalty of the law!* He was strangely forgetful of facts! The case of Mr. Smith is a warning indeed, but it is a warning *against colonial prosecution*. That man was falsely charged, and was cruelly treated by the Planters of Demerara, and he died in prison; but very soon the walls of the house of Commons resounded with the eloquence of Sir James Mackintosh and Henry Brougham, the spirit of England was aroused, and nothing probably contributed so much to the downfall of West Indian Slavery as that very case.

We await with confidence the verdict of the English people on this prosecution too. We have no fear of the result. The cultivation of Indigo, if it is to be maintained at all, must be maintained by fair prices and fair dealing. We hear as yet but little of better prices in Lower Bengal, or of any conciliatory policy towards the ryots. The object of the Planters Deputation to the Governor-General in February, apparently was to obtain a *Proclamation of Martial Law*. In that they failed. Last year, in like manner instead of rising their rates as the Government did in its Opium cultivation, they called for a Summary Coercion Law; and so severe was its administration in the disturbed districts, that the ryots became still more disinclined to sow Indigo. The object now appears to be to force on the old system still; that is, to carry on the cultivation at rates that are not remunerative to the ryot. It is not concealed

that Zemindary influence has been acquired, and will be used, to compel the ryots to go on sowing; and that rents are being enhanced, and other harsh measures resorted to to punish those who have committed the offence of refusing to sow. In vain do we look for anything like a measure such as the recent measure of Government which was adopted without hesitation, although it involved a cost to the revenue of an additional £250,000 a year. We refer to the fresh addition to the price for Opium, raising it from four rupees to five; that is from three rupees four annas in 1859, to five rupees in 1861—from six shilling and six pence to ten shillings. Till this course, or some course of the same kind, is adopted by the Indigo Planters, there will be constant irritation and excitement, and the Planters may rest assured that these prosecutions for libel will only tend to open the eyes of the people of England to the spirit in which they are acting, and so will strengthen that determination which the Houses of Parliament have already shown, not to permit any further coercion of the ryot by law.

If Mr. Long's case tends to this result, we well know that he will rejoice in all the anxieties and aspersions he has been made to bear. In the meantime, he will enjoy the happy consciousness that he has struggled for the poor,—for those, on whom we are so often told by the Evangelists, that our blessed Lord "had compassion."

Since these pages were written, the Missionaries of Calcutta have adopted some Resolutions, which we have great pleasure in publishing.

Resolutions of the Calcutta Missionary Conference.

At a special meeting of the Calcutta Missionary Conference, held on Tuesday evening, July 30th, with a very full attendance of members, the following Resolutions were adopted and ordered to be published:

"1.—That this Conference has viewed with much concern and regret, the proceedings recently instituted against one of their number, the Rev. James Long, for the part he took in publishing an English translation of a Native Drama, the *Nil Durpan*. The members of this Conference have known Mr. Long too well, and have witnessed his zeal in connection with the Native Press for too many years, to doubt the perfect accuracy of the Statement he has put forth, explaining the history of his connection with that production, and the reasons which induced him to assist in making it known, as an exponent of native thought and feeling; and they deeply regret, that after that Statement appeared, he should have been subjected to a prosecution, especially by a form of procedure which has been characterised as the harshest known to English law; and should on that harsh form of trial have been condemned to imprisonment and fined.

"That while they cannot but regret that, in the introduction to that translation, Mr. Long has not more carefully guarded himself against the supposition of having adopted as his own all the sentiments and representations of the native author, yet, confidently relying on the purity of his motives, and highly respecting his missionary character, this Conference sincerely sympathize with him in his present untoward position, and cordially assure him of their continued affection and respect.

"2.—That the Conference do not feel called upon to pronounce an opinion on the judgment exhibited in the mode adopted for circulating the *Nil Durpan;* since, on this subject, the party chiefly concerned, the (late) Secretary to the Bengal Government, has already made the most ample acknowledgments; but they entirely concur with Mr. Long in his appreciation of the importance of the Native Press, and of a watchful attention to its productions. If the effect of the recent trial should be to restrict freedom of action in the translation and republication of native works, the Conference have reason to believe that serious detriment may ensue.

"3.—That the members of this Conference lament exceedingly the continuance of any estrangement between the non-official classes and the Government, or between the different classes of the community themselves; and they therefore refrain from the expression of any opinion, which might unwittingly provoke further contention. The Memorial recently presented by members of this Conference to the Lieutenant-Governor of Bengal, asking for an enquiry into the social condition of the millions of this great province, embodies all that appears to this Conference as of most pressing urgency in connection with its public interests. And they cannot but believe that their motives in giving due attention to these and similar questions, as providential circumstances may suggest, will not be misconstrued by any who take into account the very peculiar circum-

stances of this country, or have at heart the welfare of its inhabitants.

The Calcutta Christian observer of August 1861 and Strike, But Hear pages 82-97.

(Sd.) ALEXANDER DUFF, *Chairman.*
JOSEPH MULLENS, *Secretary.*

REPRINTED FROM STRIKE BUT HEAR.

Sir Mordaunt in the course of Long's trial made remarks casting reflections on the character of the natives which exasperated them very much, at the time.

A NATIVE PUBLIC MEETING FOR THE RECALL OF SIR MORDAUNT WELLS.

A public meeting was held in the Nat Mundir of Rajah Radha Kant Deb Bahadoor on the 26th August, 1861, for the recall of Sir Mordaunt Wells. The following resolution was adopted.

"This meeting desires to record not without a feeling of regret, that its confidence in the Hon'ble Sir M. Wells, Knight, as a Judge of the Highest Court of Judicature in Bengal, has been impaired in consequence of his frequent and indiscriminate attacks on the character of the natives of this country, with an intemperance inconsistent with the calm dignity of the bench, as well as from his repeated and indiscreet exhibition of strong political bias and race prejudices which are not compatible with the impartial administration of justice."

REPLY OF SIR CHARLES WOOD TO THE HINDOO MEMORIAL FOR THE RECALL OF SIR MORDAUNT WELLS.

No. 162.

INDIA OFFICE, LONDON,
24th December 1861.

* * * *

(2.) I regret that any language used on the Bench of Justice should be supposed by any persons to convey general imputations on the moral character of the whole native inhabitants of Bengal. But I cannot think that such imputations could be intended, and I am convinced that the learned Judge must have meant, in reality, only to declare in strong terms his condemnation of certain criminal practices which had been brought to his knowledge, and which appear to have been of frequent occurrence as well as serious character.

(3.) I will conclude by expressing a hope that the feelings of which this memorial contains the evidence, may of themselves subside with time and reflexion, that those who hold judicial office may be sensible of how great importance it is that their denunciations of crime may not be interpreted into hasty imputations against a whole people or community, and that those classes which the Memorialists represent, while honorably anxious to justify themselves against any such supposed imputations, may feel how deep an interest they have in the earnest and fearless administration of justice by those to whom it is entrusted.

I have &c.,
(Sd.) C. WOOD.

(True copy.)

S. M. MONTEATH,
Under-Secretary to the Government of India.

To—Baboo Jotendro Mohun Tagore, Honorary Secretary to the British Indian Association.

(*Hurk*, 10 February, 1862.)

MR. ARCHIBALD HILLS
versus
BABOO HURISH CHUNDER MOOKERJEE, EDITOR OF THE HINDOO PATRIOT AND HIS PRINTER.

During the Indigo Crisis mention was made in the Hindoo Patriot of Mr. Archibald Hills having carried off and violated a native woman named Hurro Mani. A criminal case was instituted against the Editor of the Hindoo Patriot Baboo Hurish Chunder Mookerjee and his Printer, in the Calcutta Supreme Court which rejected it on the ground of want of local jurisdiction.

Mr. Hills therefore brought a civil suit against the printer and editor for damage for defamation of character before Baboo Taruck Nath Sen, Principal Sudder Ameen of the District of 24-Pergunnas and valued the suit at Rs. 10,000, pending the suit Hurish Chunder died.

Plaintiff substituted in his place his widow Bhogobutty Deby a defendant in the suit and a day fixed for the hearing but the case was by consent of parties ultimately disposed of in 1862 to this effect that the claim for damage was dismissed and only Rs. 1,000 awarded to the plaintiff for his costs of the suit.

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In execution of that decree the dwelling house of Hurish Chunder was attached, but the decretal amount was paid off by the subscription of the members of the British Indian Association and others.

Mr. HILLS EXAMINED BEFORE INDIGO COMMISSION.

3134. Mr. *Fergusson.*] Do you desire to make any statement about the case of abduction mentioned by Mathur Biswas?—I can distinctly state that as the case was printed in the *Hindoo Patriot*, it is utterly false. I was at Jessore till past the middle of the day, on Saturday, the 11th of February, and arrived at Katchikatta late at night. The distance was 50 miles. I did not leave the house next morning, being very tired and having no horse; the one I rode into the factory, being a *gomashta's* piebald pony, belonging to Goldar, and which was returned before I got up. I could not therefore have been out on horseback that day as stated in the *Hindoo Patriot*.

3135. Can you undertake to say, that you never saw the woman Hurro Mani that day or on the next three days?—I believe I had a glimpse of the woman in the factory, and then and there ordered her to be returned to her relations; she having been brought there without my knowledge or consent. In fact, for the week previous, I had been absent from the factory in Jessore. The man Mathur Biswas came several times subsequently to the factory, and was in conversation with me, and never said a word about it, or made any allusion to it whatever.

There was in the case no apology made by late Baboo Hurish Chunder Mookerjee as was mentioned in the issue of the *Friend of India*, dated 13th February 1862.

As the widow of the Late Hurish Chunder Mookerjee did not get any pecuniary assistance from the country men, she was compelled to compromise the case on the instructions of her counsel to the effect that she would pay Rs. 1,000 as costs, the other side giving up their whole claim.

When in execution of the compromise her house was attached she applied to the Trustees of Hurish Memorial Fund for assistance but the trustees did not assist her, whereupon the following article appeared in the Bengalee.

THE MEMORIAL FUND OF BABOO HURISH CHUNDER MOOKERJEE, EDITOR OF THE *HINDOO PATRIOT*.

The immortal Hurish Chunder Mookerjee edited the *Hindoo Patriot* from June, 1853, down to the middle of the year 1861, when he died of consumption, leaving a widow, a brother and an old mother in a state of quite helpless poverty, and a little property consisting of a house and a press with its broken types and appurtenances, which the Indigo planters of the district of Nuddea attached, by virtue of a civil decree obtained by them against the deceased Editor for libel. He made a tremendous sacrifice of his time and money for maintaining and editing that paper, and died a pauper for the cause of his country. No other native of India since his time, has been able to show that amount of self-sacrifice for the good of his native land. To perpetuate the memory of this great journalist, no adequate steps were taken at the time by his Calcutta or mufusil friends, and we must candidly say that, the people of his time were not advanced enough to appreciate the worth of the great departed. A feeble attempt at perpetuation of his memory was made, however, both in Calcutta and mufusil towns. In the town of Midnapore, Babu Rajnarain Bose, held a public meeting, and raised public subscriptions for the purpose. The late Baboo Dinobundhu Mitter, then a Superintendent of Post offices in the district of Nuddea held a similar meeting at Krishnaghur, and collected public subscriptions for Hurish memorial. In this way more than Rs. 10,000 was raised,

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and Baboo Kristo Das was appointed Secretary to the Memorial Fund. After a lapse of full sixteen years, a dark room in the lower floor of the building of the British Indian Association was solemnly inaugurated and declared as "Hurish Chunder Library." The truth of the matter is that some of the influential members of the Association who had contributed handsomely to the fund, contrived, in collusion with Baboo Kristo Das Pal, to appropriate the entire fund to the erection of the building of the Association, and a nominal memorial was raised, to the great shame of the entire Bengalee nation. The moral effect of this misapplication of public fund has been felt in our times. The public have come to the conclusion from this and other instances in which public money has been misused, that it is not safe to contribute to public funds which are not scrupulously utilised by those entrusted with them.

Afterwards the members of the British Indian Association raised a subscription and therewith released her house.

Dr. (afterwards Raja) Rajendra Lal Mitter, one of the trustees of Hurish Memorial Fund, made the following speech in the Hurish Library.

INAUGURATION OF THE HURISH CHUNDER MOOKERJEE LIBRARY.

On Saturday, the 15th July 1876, a meeting was held at premises, No. 18, British Indian Street, for the inauguration of the Hurish Chunder Mookerjee Library.

Raja (then Dr.) Rajendralala Mitra, on behalf of the Trustees of the Hurish Chunder Mookerjee Library, requested the Chairman to be good enough to announce the Library open to the public. In making this request, he said, he thought it necessary to say a few words in explanation of the circumstances which had led the Memorial Committee to adopt the course they had done, the reason of the long delay in carrying out the project, and the aim and object of the Library. Most of his audience were well aware that soon after the death of their late distinguished countryman, a meeting was held in the room of the British Indian Association to vote a memorial in honor of the lamented deceased, and a Committee was appointed to carry out the intention of the meeting. The form of the Memorial was largely discussed at a meeting; and the different propositions then made were referred to the Committee, which was left at liberty to adopt any one of them, or any new one they thought proper which they could best carry out with the means that would be at their disposal. The feeling was strong in favor of a memorial building, and the late Baboo Kally Prassana Singh, who was so honorably noted for the deep interest he took in every thing that was noble and generous, and conducive to the well-being of his countrymen, came forward with an offer to place at the disposal of the Committee a plot of land, measuring two biggahs, situated on the Upper Circular Road, on condition that the Committee should build at their cost a suitable house for a Library and for public meetings, conversaziones and theatrical performances. The offer was accepted, plans were prepared, and a trust appointed, but the subscriptions raised proved utterly inadequate for the purpose. For the thousands who had professed high esteem and respect for the lamented deceased very few indeed were found willing to come forward with their subscription. Five rupees per head from those who professed their friendship for Hurish Chunder Mookerjee would have raised a lac, but those who were the loudest in their protestations were the most conspicuous by their abstinence from touching the subscription book. After years of toil the total sum realized barely amounted to Rs. 10,500. The plan of erecting a house had, therefore, to be given up, and the land to be returned to the donor. A statue was next thought of, but no materials were available for the purpose. Hurish had never sat to an artist for his likeness; and the late Mr. Hudson, who

NOT TO BE REPRODUCED

had seen Hurish often, failed to produce picture from memory. Scholarships, prizes, stipends, and the like were next taken into consideration, but none of them commended itself to the approbation of the Committee. At this time the British Indian Association was negotiating for the purchase of a house, and as it did not require an entire house for its purposes, the Committee thought the opportunity a good one for securing accommodation for a Library on advantageous terms. Hurish Chunder Mookerjee was intimately connected with the British Indian Association for a long time. He had laboured for it most assiduously and for years. Early and late at daily desk-work, at weekly Committee Meetings, and at monthly and special general meetings, he was foremost everywhere, and identified himself in all its actions. The Association too did much to encourage him in every way. It placed at his disposal for the support of his paper a vast mass of information, and the results of varied experience derived in different walks of life by some of its oldest and most influential members; it offered him every facility for collecting facts and figures; it enabled him to mature his views by free discussion with some of the ablest men of the country. Soon after his death the members of the Association assisted in rescuing his dwelling-house from sale under an attachment for debts incurred by him on account of some law expenses, and thereby saved his mother and widow from being driven out of home and hearth; and since then they had regularly paid pensions for the support of his mother and widow. On the death of his mother they defrayed the cost of her *shradh*. His widow still gets her pension. And it was supposed under the circumstances that a memorial for him would be most appropriate if connected with the Association. The terms obtained were also the most favorable possible. For the sum of ten thousand rupees, the Trustees got the Association to agree to place at their disposal three rooms on the ground floor of its new house with the necessary outoffices with the reversion of the whole house in the event of the Association being dissolved and no new one on the same principal being formed within a year; to keep the rooms in perfect repair at its own cost; to defray all taxes and rates; to present to the Library all books and pamphlets that it may receive as presents or by purchase; to keep a clerk in attendance at the Library free of charge; to hold in custody the books and effects of the Trust; and to direct the servants of the Association to attend to the cleanliness of the rooms. Thus the whole expense of maintaining the Library was secured, and it was thought that it was not at all likely that better terms could anywhere else be got. The negotiations were at once closed, and this Library is the result. For the supply of newspapers the Trustees are indebted to the Editor of the *Hindoo Patriot*, who has promised to place at their disposal all the papers that he purchases or gets in exchange for his paper. As the *Patriot* was originally established and raised to its high position by Hurish Chunder Mookerjee, and is intimately associated with his memory, indeed it is the best monument that he could have left of himself and which had been so ably and so successfully maintained by his successor (cheers), it was not apprehended that this source of supply of newspapers either from the present Editor or his successors will in a hurry be cut off. The speaker then read out a statement of accounts brought up to date which showed that after paying Rs. 10,000 for house accommodation and defraying the cost of book-cases, furniture &c., there was a balance in their hand of Rs. 1,500 in Government securities and about Rs. 400 in the Bank of Bengal to the credit of the Library. The whole of this sum will be devoted to the purchase of books. For the future the Library must depend upon the gifts from authors and friends and to such purchases as the Trustees can effect with monthly subscriptions from persons who may wish

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to borrow books for perusal at home. No arrangement for such subscriptions has yet been made. On the whole the speaker confessed that the Library made but a very humble beginning. To those who were accustomed to large National Libraries, commanding from three to seventeen lacs of books, and whose annual purchases reckoned by thousands of pounds sterling, this would doubtless appear extremely insignificant. But India never had a National Public Library, and there was no near prospect of one being established for her. In India such an institution would be immensely costly, and it was not at all likely that the Government would undertake one in a hurry. In Europe national libraries derived their supply of books principally through certain compulsory sections of Copyright Acts. In England seventeen copies of every new book have to be presented to the different national libraries, and this at once ensures a free and gratuitous supply of every book published in the country. For books of small value this is not matter of much consequence, but when we come to large illustrated works, like Gould's 'Birds of Australia,' and the like, the tax on the publishers amounts to several thousands of rupees for every book; and when the Indian Copyright Act was passed, this fact was taken into consideration, and no compulsory clause was introduced into it. For purposes of registration only three copies are taken of each book, and they are paid for. Had they been deposited in a Library open to the public, it would have been something, but they are buried in the Secretariat, and printed as most Indian books are on country paper, they are only destined to feed our white ants. Had the case been otherwise, and a gratuitous supply of books had been insisted upon for one or more public Libraries, still the result on the intellectual progress of the country would have been simply inappreciable. For years—nay centuries—India must draw the bulk of her supplies of books from Europe, and will have to pay for them all at full rates, and the annual amount for an adequate supply of English, French, German, Italian, and American books would amount to an enormous sum, which the Government was not at all willing to contribute. This fact has been felt for a long time; and those who take an interest in books, or have business to transact which requires constant references to books have adopted the system of division of responsibility to supply their wants. The Barristers cannot go on a step without books, and they have kept up their Bar Library. The Botanists have at the Royal Botanical Gardens at Sibpur and excellent collection of Botanical works, most of them of great value, and all useful to those who are engaged in that particular branch of study. In India, which was a Botanical microcosm embracing within its boundary the flora of every part of the world, from the tropics to the poles, the study of Botany was a most important one, and it was greatly to be desired that this Library should be thrown open to the public even as the Gardens are; but even then, located as the Library now is, there is no prospect that it would be very largely resorted to. The Trustees of the Indian Museum are now forming a Scientific Library, which, it is to be hoped, will be open to the public. The Library attached to the Presidency College is a large one, but it is not, and cannot, be accessible to the public. The largest and by far the richest library in Calcutta is that of the Asiatic Society of Bengal. It comprises a collection of Mss. in Sanskrit, Persian, Arabic, Urdu, Burmese, Pali, Nepalese, and English, the like of which is nowhere else to be had, except in the British Museum and the India House Library. Its collection of European books on Indian subjects was also select and valuable, and the speaker could not refer to them without acknowledging his own obligations to it; but it was a private library, intended for use of a private Association, and the public had no right or prospect to avail themselves of it. The only library open

to the public in Calcutta was the one located in the Metcalfe Hall. It was a proprietory institution; but the proprietors were liberal and they invited the public to participate in their riches. But it was a circulating library, and the kind of books it patronised most was just what a great number of people did not admire. "Prose works of imagination" as they call them form the staple of its stock, and many of these were deleterious to a degree. It was a matter of deep regret to moralists and others interested in the moral and intellectual amelioration of mankind, that the public taste of late had taken so strong a leaning towards the sensational, and a host of writers were so busily engaged in pandering to that taste. French novelists of the present day were specially guilty in this respect, and it was a matter of particular regret that many English ladies had followed in their wake. It is true that they do not openly praise immorality and vice, but they paint immorality and vice in colours which cannot fail to recommend them to unwary readers. Whatever the character of her own life, George Sand did not praise immorality, but her novels are the more dangerous, because they are so insidious. Mrs. Norton revels in her novels in poisoning, murder, seduction, lust, and debauchery; Miss Braddon, Miss Broughton, Miss Annie Thomas, Miss Florence Marryat, Ouida and others are all great sinners in this respect, and some of them indulge in descriptions of unbridled lust, debauchery and crime with the most rhapsodical extravagance. They are nevertheless all fashionable writers, and their works are most extensively read in every English home. And it was not at all to be wondered at if the insidious, prurient, deleterious, or pestiferous intellectual pabulum they yield has not much to account for the frivolity, listlessness and other evils so characteristic of the 'girls' of the period. But if there were bad novels, there were also good ones. If "Cometh up like a flower," be sickening to every right-thinking mind, there are works of some of the best English writers to afford solace and refreshment, Who is there that, because there are novels by a Reynolds, would condemn the works of Sir Walter Scott, of Bulwer, of Dickens and Thackeray? Who there is who will deny that Waverly is as charming as the best of poetry? Who will prohibit the good because there is the bad? The speaker's avocations did not always permit him to indulge in novel reading; but he never missed an opportunity of reading novels when good ones came in his way; and he had read many hundreds of volumes. On one occasion he was confined to bed by a painful and tedious disease for a whole year, and during the time forbidden to speak and unable to converse with his friends. The only means by which he could allay his pain and forget his illness was by reading those novels, and he greatly benefitted by the occupation, and those books which afforded him relief he could not denounce as bad or injurious. No, as a means of intellectual recreation they were as valuable as good poetry, and for increasing the knowledge of human society, improving conversation, making men more and more sociable, novels were better. Those whom the cares of the world and the battle of life left ample opportunities for reading them, they were highly useful. But good, bad or indifferent, there they were, and those who sought them would find them at the Public Library. It was not the object of the new Library to supply them. Hurish Chunder was no great scholar in the ordinary sense of the word he did not pore over ancient classics, nor attempt to unravel the tangled knot of past history. He lived with the living, and thought with the living, and worked with the living. The present was everything for him, and he distinguished himself most as a political writer, toiling for the good of his countrymen, and it was, therefore, proposed that the Library to his memory should be a political one, calculated to train up his countrymen for working in the same field in which he obtained such eminent

success. With his view it was intended that every work on modern Indian history and every book and pamphlet which had been, and hereafter may be, published, bearing on the social and political economy of the country, should be brought together, so that the student may have within his reach all the materials of history that he may require for his purpose. In short, the object was to prepare a training school for future Hurish Chundras; and it is to be sincerely hoped that there will be no want of recruits who may in time not only rival but outshine the noble patriot whose memory the nation wishes so fondly to cherish. The resources necessary for the support of a Library of the kind proposed were not large, and should be easily provided; in fact they had been in a great measure already provided; but there must be simple-hearted, earnest patriots to benefit by them, and it will rest with the rising generation to show that India has not altogether ceased to bear true and worthy sons; and that they will continue to maintain the literary renown of their ancestors must be the earnest prayer of all who love their country.

The trial of Maha Rajah Nundocomar, Bahader, for Forgery. At Calcutta, in the Province of Bengal: 15 George III.* A. D. *1775. [Published by Authority of the Supreme Court of Judicature in Bengal. London: Printed for T. Cadell in the Strand, 1776.]*†

JUNE 8, 1775.

At a Court of Oyer and Terminer, and Gaol Delivery, holden in and for the Town of Calcutta, and Factory of Fort William, in Bengal, and the Limits thereof, and the Factories subordinate thereunto, on the 3rd day of June, 1775.—Before the Hon. Sir ELIJAH IMPEY, knt. Chief Justice, ROBERT CHAMBERS, STEPHEN CÆSAR LEMAISTRE, and JOHN HYDE, esqrs. Justices.

The KING *v.* Maha Rajah NUNDOCOMAR.

THE Prisoner being called to the bar, and arraigned, and the indictment read his counsel tendered a plea to the jurisdiction of the Court; but the Chief Justice pointing out an objection thereto, which went both to the matter of fact and the law contained therein, and desiring the counsel to consider if he could amend it, and take time for so doing, he, after having considered the objection, thought proper to withdraw the plea; whereupon the prisoner pleaded, Not Guilty: and being asked by whom he would be tried? he answered, By God and his peers. The Court desired to know whether he had any particular reason for using the word peers? His counsel answered, that the prisoner being a man of the first dignity in this kingdom, thought he should be tried by people of equal rank with himself, agreeably to the law of England, which permits every man to be tried by his peers. The Court asked, who the Maha Rajah considered as his peers? His counsel answered, he must leave that to the Court.

Chief Justice. The trial can only be by such persons as are by the charter required to form the jury. A peer of Ireland tried in England would be tried by a common jury. The charter directs, that in all criminal prosecutions, the prisoner should be tried by the inhabitants of the town of Calcutta, being British subjects.

It being late, the Court adjourned till the next morning at seven o'clock.

JUNE 9, 1775.

The counsel for the prisoner informed the Court, that the Maha Rajah had

* These proceedings are amply discussed in the Case of Governor Hastings and of Sir Elijah Impey, and in the Parliamentary Debates respecting those Cases.

† Howell's State Trials 8vo. Ed. Vol. XX. column, p. 923.

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been ill in the night, and had now a flux and fever, which rendered him incapable of taking his trial.

The Court desired Dr. Anderson and Dr. Williams to examine the prisoner, which they did, and reported that he complained of having been indisposed in the night, but that he had neither flux nor fever, and was very capable of taking his trial; whereupon he was called to the bar.

The Prisoner being informed of his right to challenge when the Jury came to be sworn, challenged the following gentlemen, from a paper held in his hand: John Lewis, William Atkinson, John Williams, William Dickson, Richard Johnson, Joshua Nixon, Robert Donald, James Miller, Tilly Kettle, Ramsay Hanay, Thomas Adams, Bernard Messineck, Wm. Hamilton Bird, Charles Moore, Alexander Macneil, James Lally, William Briggs, Philip Coales.

The Counsel for the Crown challenged Samuel Stalham.

The following Jury was sworn:

Edward Scott,	John Ferguson,
Robert Macfarlin,	Arthur Adie,
Thomas Smith,	John Collis,
Edward Ellerington,	Samuel Touchet,
Joseph Bernard Smith,	Edward Satterthwaite,
John Robinson,	Charles Weston.

The Jury elected Mr. John Robinson their foreman.

Mr. William Chambers, the principal interpreter, not being yet come from Madras, and the two assistant interpreters, on account of their imperfect knowledge of English, being deemed insufficient for a trial so long as this was expected to be, Mr. Alexander Kyn. Elliot, Superintendent of the Khalsa Records, a gentleman eminently skilled in the Persian and Hindostan languages, and Mr. William Jackson, lately admitted an attorney of the court, who speaks the Hindostan tongue fluently, were requested by the Court to interpret.

The Counsel for the prisoner desired that the evidence might be interpreted to him in the Hindostan language, as it was most generally understood by the audience, and requested that the interpreter of the Court might be employed for that purpose, and objected to the interpretation of Mr. Elliot, as being connected with persons whom the prisoner considered as his enemies.

Chief Justice. The principal interpreter of the Court is absent; the gentlemen of the jury have heard the interpretation of the assistant interpreters on other occasions. Do you, gentlemen, think we shall be able to go through this cause, with the assistance of those interpreters only?

Jury. We are sure we shall not be able.

Chief Justice. It is a cruel insinuation against the character of Mr. Elliot. His youth, just rising into life, his family, his known abilities and honour, should have protected him from it.

[Mr. Elliot desired he might decline interpreting.]

Chief Justice. We must insist upon it, that you interpret: you should be above giving way to the imputation: your skill in the languages, and your candour, will show how little ground there is for it.

Mr. *Farrer.* I hope Mr. Elliot does not think the objection came from me; it was suggested to me.

Chief Justice. Who suggested it?

Mr. *Farrer.* I am not authorized to name the person.

Chief Justice. It was improper to be made, especially as the person who suggested, does not authorise you to avow it.

Jury. We all desire that Mr. Elliot, whose character and abilities we all know, would be so kind as to interpret.

Mr. *Farrer.* I desire on the part of the prisoner, that Mr. Elliot would interpret.

Mr. Elliot and Mr. Jackson sworn to interpret.

The Jury being impannelled, were charged with the prisoner, and the clerk of the crown read the Indictment as follows:

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"*Town of Calcutta, and Factory of Fort William, in Bengal.*" } I. To wit. The jurors for our lord the king, upon their oath present, That Maha Rajah Nundocomar, Bahader, late inhabitant of the town of Calcutta, and a person subject to the jurisdiction of the Supreme Court of Judicature at Fort William, in Bengal, after the 29th day of June, in the year of our Lord 1729, to wit, on the 15th day of January, 1770, in the 10th year of the reign of our sovereign lord George the 3rd, king of Great Britain, at the town of Calcutta aforesaid, with force and arms, feloniously did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited, a certain bond in the Persian language, purporting to be sealed by one Bollakey Doss, with the seal or chop of him the said Bollakey Doss, the tenor of which bond is as follows, [here the bond is written in Persian] with an intent to defraud the said Bollakey Doss of the sum of 48,021 sicca rupees principal, and of four annas on each rupee of the said principal sum, as premium or profit on the said principal sum, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors aforesaid, upon their oath aforesaid, do further present, that the aforesaid Maha Rajah Nundocomar, Bahader, afterwards, to wit, on the 15th day of January, in the year last abovesaid, at Calcutta aforesaid, a certain false, forged, and counterfeited bond in the Persian language, purporting to have been sealed by the said Bollakey Doss, with the seal or chop of him the said Bollakey Doss, feloniously did utter and publish as a true bond; which said bond is in the words, characters, and figures following, [Persian bond again recited], with an intent to defraud the said Bollakey Doss of the said sum of 48,021 sicca rupees principal, and of four annas on each rupee of the said principal sum, as premium or profit on the said principal sum; the said Maha Rajah Nundocomar, Bahader, at the time of publishing of the said false, forged, and counterfeited bond by him, as aforesaid, then and there, well knowing the said bond to have been false, forged, and counterfeited, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath do further present, that Maha Rajah Nundocomar, Bahader, late inhabitant in the town of Calcutta, and a person subject to the jurisdiction of the Supreme Court of Judicature, at Fort William in Bengal, on the 15th day of January, in the year last aforesaid, with force and arms, at the town of Calcutta aforesaid, feloniously did falsely make, forge, and counterfeit, and did cause to be falsely made, forged, and counterfeited, a certain bond, written in the Persian language, and purporting to be sealed by one Bollakey Doss (then deceased) in his life time, with the seal or chop of him the said Bollakey Doss; the tenor of which is as follows, [Persian bond again recited] with an intent to defraud Gungabissen and Pudmohun Doss, executors of the last will and testament of the said Bollakey Doss, of the sum of 48,021 sicca rupees as principal, and of four annas on each rupee, as a profit or premium on the said principal sum, against the form of the statute in that case made and provided, and against the peace of our sovereign lord the king, his crown and dignity.

"And the jurors aforesaid, upon their oath aforesaid, do further present, that the aforesaid Maha Rajah Nundocomar Bahader, afterwards, to wit, on the said 15th day of January, in the year last abovesaid, at Calcutta aforesaid, a certain false, forged, and counterfeited bond, purporting to be sealed by the said Bollakey Doss (then deceased) in his life time, with the seal or chop of him the said Bollakey Doss, feloniously did utter and publish as a true bond; which said bond is in the words, characters,

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and figures following, to wit, [Persian bond again recited] with an intent to defraud the said Gungabissen and Pudmohun Doss of the said sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum; the said Maha Rajah Nundocomar, Bahader, at the time of publishing the said false, forged, and counterfeited bond, by him as aforesaid, then and there, well knowing the said bond to have been false, forged, and counterfeited, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath aforesaid, do further present, that on the 15th day of January, in the year last abovesaid, Maha Rajah Nundocomar, Bahader late inhabitant of the town of Calcutta, and a person subject to the jurisdiction of the Supreme Court of Judicature, at Fort William in Bengal, with force and arms, at the town of Calcutta aforesaid, feloniously did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited, a certain writing obligatory in the Persian language, purporting to be sealed by the said Bollakey Doss, with the seal or chop of him the said Bollakey Doss, the tenor of which writing obligatory is as follows, [Persian bond again recited] with an intent to defraud the said Bollakey Doss of the sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Maha Rajah Nundocomar, Bahader, afterwards, to wit, on the said 15th day of January, in the year last abovesaid, at Calcutta aforesaid, a certain false, forged, and counterfeited writing obligatory, in the Persian language, purporting to have been sealed by the said Bollakey Doss, with the seal or chop of him the said Bollakey Doss, feloniously did utter and publish as a true writing obligatory; which said writing obligatory is in the words, character, and figures following, [Persian bond again recited] with an intent to defraud the said Bollakey Doss of the said sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum; the said Maha Rajah Nundocomar, Bahader, at the time of publishing the said false, forged, and counterfeited writing obligatory, by him as aforesaid, then and there, well knowing the said writing obligatory to have been false, forged, and counterfeited, against the form of statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon the oath aforesaid, do further present, that on the 15th day of January, in the year last abovesaid, Maha Rajah Nundocomar, Bahader, late inhabitant of the town of Calcutta, and a person subject to the jurisdiction of the Supreme Court of Judicature at Fort William in Bengal, with force and arms, at the town of Calcutta aforesaid, feloniously did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited a certain writing obligatory in the Persian language, purporting to have sealed by the said Bollakey Dass (then deceased) in his life time, with the seal or chop of him the said Bollakey Doss; the tenor of which writing obligatory is as follows, [Persian bond again recited] with an intent to defraud Gungabissen and Pudmohun Doss, the executors of the said Bollakey Doss, of the sum of 48,021 sicca rupees of principal sum, against the form of the statute in that case made and provided, and against the peace of our said lord king, his crown and dignity.

"And the jurors aforesaid, upon their oath aforesaid do further present, that

the said Maha Rajah Nundocomar, Bahader, afterwards, to wit, on the 15th day of January, in the year last abovesaid, at Calcutta aforesaid, a certain false, forged, and counterfeited writing obligatory, in the Persian language, purporting to have been sealed by the said Bollakey Doss (then deceased) in his life time, with the seal or chop of him the said Bollakey Doss, feloniously did utter and publish as a true writing obligatory; which said writing obligatory is in the words, characters, and figures following, [Persian bond again recited] with an intent to defraud the said Gungabissen and Pudmohan Doss, the executors of the said Bollakey Doss, of the said sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum; the said Maha Rajah Nundocomar, Bahader, at the time of publishing the said false, forged, and counterfeited writing obligatory, by him aforesaid, then and there, well knowing the said writing obligatory to have been false, forged, and counterfeited, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath aforesaid, do further present, that on the 15th day of January, in the year last abovesaid, Maha Rajah Nundocomar, Bahader, late inhabitant of the town of Calcutta, and a person subject to the jurisdiction of the Supreme Court of Judicature, at Fort William, in Bengal, with force and arms, at the town of Calcutta aforesaid, feloniously did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited, a promissory note for payment of money, in the Persian language, purporting to be sealed by the said Bollakey Doss, with the seal or chop of him the said Bollakey Doss, the tenor of which promissory note is as follows, [Persian bond again recited] with an intent to defraud the said Bollakey Doss of the sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Maha Rajah Nundocomar, Bahader, afterwards, to wit, on the 15th day of January, in the year last abovesaid, at Calcutta aforesaid, a certain false, forged, and counterfeited promissory note, for the payment of money, in the Persian language, purporting to have been sealed by the said Bollakey Doss, with the seal or chop of him the said Bollakey Doss, feloniously did utter and publish as a true promissory note; which promissory note is in the words, characters, and figures following, [Persian bond again recited] with an intent to defraud the said Bollakey Doss of the said sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum; the said Maha Rajah Nundocomar, Bahader, at the time of publishing the said false, forged, and counterfeited promissory note, by him as aforesaid, then and there, well knowing the said promissory note to have been false, forged, and counterfeited, against the form of the statute in such case made and provided; and against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath aforesaid, do further present, that on the 15th day of January, in the year last abovesaid, Maha Rajah Nundocomar, Bahader, late inhabitant of the town of Calcutta, and a person subject to the jurisdiction of the Supreme Court of Judicature at Fort William in Bengal, with force and arms, at the town of Calcutta aforesaid, feloniously did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited, a promissory note for payment of money, in the Persian language, purporting to be sealed by the said Bolla-

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key Doss, (then deceased) in his life time with the seal or chop of him the said Bollakey Doss; the tenor of which promissory note is as follows, [Persian bond again recited] with an intent to defraud Gungabissen and Pudmohun Doss, the executors of the said Bollakey Doss, the sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Maha Rajah Nundocomar, Bahader, afterwards, to wit, on the 15th day of January, in the year last abovesaid, at Calcutta aforesaid, a certain false, forged, and counterfeited promissory note for payment of money, in the Persian language, purporting to have been sealed by the said Bollakey Doss (then deceased) in his life time, with the seal or chop of him the said Bollakey Doss, feloniously did utter and publish as a true promissory note; which promissory note is in the words, characters, and figures following, [Persian bond recited] with an intent to defraud the said Gungabissen and Pudmohun Doss, the executors of the said Bollakey Doss, of the said sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum; the said Maha Rajah Nundocomar, Bahader, at the time of publishing the said false, forged, and counterfeited promissory note by him as aforesaid, then and there, well knowing the said promissory note to have been false, forged, and counterfeited, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath aforesaid, do further present, that on the 15th day of January, in the year last abovesaid, Maha Rajah Nundocomar, Bahader, late inhabitant of the town of Calcutta, and a person subject to the jurisdiction of the Supreme Court of Judicature at Fort William in Bengal, with force and arms, at the town of Calcutta aforesaid, did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited, a certain writing obligatory in the Persian language; the tenor of which writing obligatory is as follows, [Persian bond again recited] with an intent to defraud that the said Bollakey Doss of the sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum, against the form of the statute in that case made and provided, against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath aforesaid, do further present, that the said Maha Rajah Nundocomar, Bahader, afterwards, to wit, on the said 15th day of January, in the year last abovesaid, at Calcutta aforesaid, a certain false, forged, and counterfeited writing obligatory, in the Persian language, feloniously did utter and publish as a true writing obligatory; which said writing obligatory is in the words, characters, and figures following, [Persian bond again recited] with an intent to defraud the said Bollakey Doss of the said sum of 48,021 sicca rupees of principal, and of four annas on each rupee as profit or premium on the said principal sum; the said Maha Rajah Nundocomar, Bahader, at the time of publishing the said false, forged counterfeited writing obligatory, by him as aforesaid, then and there, well knowing the said writing obligatory to have been false, forged, and counterfeited, against the form of the statute in such case made and provided, and against the peace of our said lord king, his crown and dignity,

"And the jurors for our lord the king, upon their oath aforesaid, do further present, that on the 15th day of January, in the year last abovesaid, Maha Rajah Nundocomar, Bahader, late inhabitant of the town of Calcutta, and a person subject to the jurisdiction of the

Supreme Court of Judicature at Fort William in Bengal, with force and arms, at the town of Calcutta aforesaid, did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited, a certain writing obligatory in the Persian language: the tenor of which writing obligatory is as follows, [Persian bond again recited] with an intent to defraud Gungabissen and Pudmohun Doss, the executors of the said Bollakey Doss, of the sum of 48,021 sicca rupees of principal, and of four annas on each rupee o^c^ profit or premium on the said principal sum, against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath aforesaid, do further present, that the said Maha Rajah Nundocomar, Bahader, afterwards, to wit, on the said 15th day of January, and year last abovesaid, at Calcutta aforesaid, a certain false, forged, and counterfeited writing obligatory, in the Persian language, feloniously did utter and publish as a true writing obligatory; which said writing obligatory is in the words, characters, and figures following, [Persian bond again recited] with an intent to defraud Gungabissen, and Pudmohun Doss, the said executors of the said Bollakey Doss, of the said sum of 48,021 sicca rupees of principal, and of four annas on each rupee, as profit or premium on the said principal sum; the said Maha Rajah Nundocomar, Bahader, at the time of publishing the said false, forged, and counterfeited writing obligatory, by him as aforesaid, then and there, well knowing the said obligatory writing to have been false, forged, and counterfeited, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath aforesaid, do further present, that the Maha Rajah Nundocomar, Bahader, late of the town of Calcutta, being a person subject to the Supreme Court of Judicature at Fort William in Bengal, on the 15th day of January, in the year abovesaid, with force and arms, at Calcutta aforesaid, feloniously did falsely make, forge and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited, a certain writing obligatory in the Persian language; the tenor of which certain writing obligatory is as follows, [Persian bond again recited] with an intent to defraud Gungabissen and Hengoo Laul, the two nephews and trustees named in the last will and testament of Bollakey Doss, deceased, of the sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath aforesaid, do further present, that Maha Rajah Nundocomer, Bahader, late inhabitant of the town of Calcutta, being a person subject to the Supreme Court of Judicature, at Fort William in Bengal, on the 15th day of January, in the year abovesaid, at Calcutta aforesaid, a certain false, forged, and counterfeited writing obligatory, in the Persian language, feloniously did utter and publish as a true writing obligatory; the tenor of which writing obligatory is as follows, [Persian bond again recited] with an intent to defraud Gungabissen and Hengoo Laul, the two nephews and trustees named in the last will and testament of Bollakey Doss, deceased, of the sum of 48,021 sicca rupees of principal, and of four annas on each rupee of profit or premium on the said principal sum; the said Maha Rajah Nundocomar, Bahader, at the time of publishing the said false, forged, and counterfeited writing obligatory, by him as aforesaid, then and there, well knowing the said writing obligatory to have been false, forged, and counterfeited, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath aforesaid, do further

present, that on the 15th day of January, in the year last abovesaid, Maha Rajah Nundocomar, Bahader, late inhabitant of the town of Calcutta, and a person subject to the jurisdiction of the Supreme Court of Judicature at Fort William, in Bengal, with force and arms, at the town of Calcutta aforesaid, feloniously did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged and counterfeited, a certain writing obligatory, in the Persian language; the tenor of which writing obligatory is as follows, [Persian bond again recited] with an intent to defraud Gungabissen, the surviving executor of Bollakey Doss, deceased, of the sum of 48,021 sicca rupees, of principal and of four annas on each rupee, of profit or premium on the said principal sum, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

"And the jurors for our lord the king, upon their oath aforesaid, do further present, that the said Maha Rajah Nundocomar, Bahader, afterwards, to wit, on the 15th day of January in the year last abovesaid, at Calcutta aforesaid, a certain false, forged, and counterfeited writing obligatory, in the Persian language, feloniously did utter and publish as a true writing obligatory; which said writing obligatory is in the words, characters, and figures following, [Persian bond again recited] with an intent to defraud Gungabissen, the surviving executor of Bollakey Doss, deceased, of the said sum of 48,021 sicca rupees, of principal, and of four annas on each rupee, as profit or premium on the said principal sum; the said Maha Rajah Nundocomar, Bahader, at the time of publishing the said false, forged, and counterfeited writing obligatory, by him as aforesaid, then and there, well knowing the said obligatory writing to have been false, forged, and counterfeited, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity."

(Sd.) JA. PRITCHARD,
Clerk of the crown.

June 7, 1775.

(Sd.) W. M. BECKWITH,
Clerk of the Indictment.

TRANSLATE of the PERSIAN BOND, recited in the Indictment.

"I who am Bollakey Doss.

"As a pearl necklace, a twisted kulghah, a twisted serpache, and four rings, two of which were of rubies and two of diamonds, were deposited by Rogonaut Roy Geoo, on account of Maha Rajah Nundocomar, Bahader, in the month of Assar, in the Bengal year 1165, with me, in my house at Moorshedabad, that the same might be sold; at the time of the defeat of the army of the Nabob Meer Mahomed Cossim Cawn, the money and effects of the house, together with the aforesaid jewels, were plundered and carried away. In the year 1172, Bengal style, when I arrived in Calcutta, the aforesaid Maha Rajah demanded the before-mentioned deposit of jewels; I could not produce the deposit when demanded, and, on account of the bad state of my affairs, was unable to pay the value thereof; I therefore promise and give it in writing, that when I shall receive back the sum of two lacks of rupees, and a little above, which is in the Company's cash at Dacca, according to the method of reckoning of the Company, I have agreed and settled, that the sum of 48,021 sicca rupees is the principal of the amount of the said deposit of jewels, which is justly due by me, and over and above that, a premium of four annas upon every rupee. Upon the payment of the aforesaid sum from the Company's cash. I will pay that sum, without excuse and evasion, to the aforesaid Maha Rajah. I have, for the above reasons, given these reasons in the form of a bond under my signature, that when it

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is necessary it may be carried into execution.

"It is witnessed,

"MEHAR ROY;

"SCHLAUBUT, the Vakeel of Seat Bollakey Doss;

"ABDEHOO COMAUL MAHOMED. Alabd, BOLLAKEY DOSS."

Written on the 7th day of the month of Bhadoon, in the Bengal year 1172.

* * * *

* * * *

Lord Chief Justice *Impey*:

The prisoner stands indicted for forging a Persian bond, with an intent to defraud Bollakey Doss; and also for publishing the same, knowing it to be forged. This offence is laid in several manners, by different counts in the indictment, sometimes calling it a 'writing obligatory,' and sometimes a 'promissory note'; and it is laid to be with an intent to defraud different people, differently interested.

I shall lay out of the case all those counts to which I think no evidence can be applied; and shall only mention those to which it may, and shall point out those to which it most particularly applies. I lay out of the case the accounts where the publication is said to be to defraud Bollakey Doss, as the publication which is proved was after his death: as also those which charge it to be to defraud Pudmohun Doss and Gungabissen as joint executors, there being no proof that Pudmohun Doss ever was an executor.

The only counts to which any evidence, in my opinion, can be applied, are the first, fifth, ninth, and thirteenth, which charge this instrument to be forged with intent to defraud Bollakey Doss: the eighteenth, which charges it to be forged with intent to defraud Gungabissen and Hingoo Loll, nephews and trustees named in the will of Bollakey Doss: the nineteenth, to which the evidence most forcibly applies, for publishing the same knowing it to be forged, with intent to defraud Gungabissen and Hingoo Lall: the 20th and 21st, which charge the forgery and publication to be with intent to defraud Gungabissen, the surviving executor.

There has been no evidence at what time the instrument was actually forged; and therefore it may be difficult for you to ascertain whether it was in the life of Bollakey Doss, and consequently whether to defraud him, or such persons as had interest in his estate after his decease.

The publication was clearly after his decease; and therefore, if you should think the prisoner guilty of that, you would not have the same difficulty as to whom it was to defraud, as it must be his executors, or other persons who took benefit by his will. As the estate was distributed according to the division of the rupee, which is a custom in this country similar to that of the Romans dividing the as; there is no doubt it must have been to the prejudice of his nephews Gungabissen and Hingoo Loll.

I will however, after I have gone through the whole evidence, point out that part of it which applies to the actual forgery, and then what applies to the publication, knowing it to be forged.

As the trial has now taken so many days, and the evidence is so long, notwithstanding you have given an attention that I have never before seen in a jury through so long a trial; it will be necessary, for the purpose of bringing it together, and to refresh your memories as to those parts which passed early in the trial, to recapitulate the whole of the evidence.

[Here the Chief Justice read over the whole of the evidence, and then proceeded.]

By the laws of England, the counsel for prisoners charged with felony are not allowed to observe on the evidence to the jury, but are to confine themselves to matters of law: but I told them, that, if they would deliver to me any observations they wished to be

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made to the jury, I would submit them to you, and give them their full force; by which means they will have the same advantage as they would have had in a civil case.

Mr. Farrer has delivered me the following observations, which I read to you in his own words, and desire you to give them the full weight, which, on consideration, you may think they deserve.

'It is no forgery on Bollakey Doss, 'because it is not proved to have been 'forged in his life time.'

He is certainly right in the observation, that there is no proof adduced of the time of the actual forgery.

'No forgery on the executors, because 'the prosecutor's evidence proves that 'they were previously informed of the 'forgery, and voluntarily paid the bond. 'Pudmohun Doss expressly knew it.'

This will depend on the evidence, which I shall observe upon hereafter, whether Gungabissen was so informed. I think there is great reason to suspect that Pudmohun Doss was privy to the fraud, if any fraud has been. But I have laid those counts out of the case, which charge either the forgery, or the publication, knowing of the forgery, with an intent to defraud Pudmohun Doss and Gungabissen as joint executors, because the prosecutors have failed in this proof of Pudmohun Doss's being an executor. They produced no probate to Pudmohun Doss, and would have proved it by his having signed an account delivered into the Mayor's Court. This we did not think sufficient to prove him executor: Mohun Persaud by that means might likewise have been proved an executor; for he has signed an account which was delivered in to that court.

'No forgery upon the trustees, or 'residuary legatees, because they had 'only a contingent interest at the time 'of the publication, and not a vested 'one. It was not an interest 'debitum 'in præsenti, solvendum in futuro:' had 'they died before the contingency hap-'pened the interest would not have 'gone to their representatives as such, 'and as claiming under them, but to 'the next of kin of Bollakey Doss; 'therefore they could not be defrauded.'

This is a point of law, and I cannot help differing from Mr. Farrer in it; for in my opinion, and in all our opinions, the interests of the nephews and residuary legatees is a vested interest, and would, whenever the money due to Bollakey Doss from the company should be paid, go to the representatives. The receipt of that money is, I suppose, what is understood by Mr. Farrer to be the contingency.

This objection seems to be made from misstating an observation made early in the cause by my brother Chambers, and which I was at first struck with; which was, That neither the appointment of executors, or any part of the will, was to take place till after the payment of the debt from the Company; that is, that Bollakey Doss considered himself worth nothing but that debt, and meant only to make a will in case that money should be recovered. But, on looking into the will, I pointed out to my brother Chambers that there were dispositions of other monies; and we are both satisfied that the appointment of executors would have taken place, and the will had sufficient to operate upon, though that money had not been paid; and that, if it was not, Bollakey Doss did not mean to die intestate. But, however, there is evidence that it has been satisfied by Company's bonds.

Mr. Farrer has likewise given me these further observations:

'Persian letters, sealed in the usual 'mode of the country, not allowed to 'be given in evidence: by our laws, 'letters sealed in the usual mode in 'England would.'

You cast your eyes on those letters, and observed on the receney of the writing. You thought them an imposition; but, as they were not given in evidence, I desired you would not suffer it to make any impression on you. I have no apprehensions the laws of any country would permit them to be given

in evidence. They were letters, enclosed in a cover, sealed with the seal of Bollakey Doss; but were separated from the covers, which had been opened. Any writings might have been put into those covers. There was no signature to the letters. There was no attempt to prove that the direction of the covers were of the same hand-writing with the letters themselves, or that they were the hand-writing of Bollakey Doss, or of any of his writers. If this was allowed, any evidence might be fabricated, to serve all purposes. Letters in England have the signature of the writer, and his hand-writing may be proved: it is impossible these could be given in evidence.

'The witnesses are dead, the transac-
'tion is stale, and long since known to
'the prosecutor.'

These are objections of weight, which you, gentlemen, ought carefully to attend to, when you take the whole of the evidence into consideration, for the purpose of forming the verdict; and I have no doubt you will attend to them.

'No evidence of defendant's having
'forged Bollakey Doss's seal, for which
'he alone stands indicted.'

There is clearly no direct evidence of his having actually forged the seal. But Mr. Farrer is mistaken, when he says the prisoner stands only indicted of forging the seal: he is inaccurate in saying he stands indicted of forging the seal; it is for forging the bond. But he does not stand indicted of that only: he is indicted for publishing it knowing it to be forged; and, as I shall hereafter shew, it is to that the evidence chiefly applies, and to which I must require your more immediate attention.

'The absurdity of the defendant's
'confessing a circumstance, which would
'endanger his life, to people with whom
'he was not in terms of confidence—his
'refusing, three months after, to become
'security for Comaul O Deen in his
'farm; a thing trifling in its nature,
'when contrasted with the conse-
'quences which might naturally be
'expected from a refusal—the small
'degree of credit due to a confession
'made only once, and nobody present
'but the party and the witness, which
'are the words of Comaul's evidence.'

It is highly proper you should take these circumstances into consideration; you will consider on what terms they were at the time of these conversations. Confessions of this nature are undoubtedly suspicious; and to which, except there are matters to corroborate them, you should be very cautious in giving too much credit.

'Nothing any ways extraordinary in
'Comaul's mentioning the circumstance
'of the defendant's confession; as it is
'well known that, in the most common
'occurrences, the natives of this country
'form the most iniquitous schemes,
'which are not brought to maturity, or
'disclosed to the public, for a much
'greater period of time than the pre-
'sent; and that their truth and false-
'hood are so artfully interwoven, that it
'is almost impossible to come at the
'truth.'

My residence in the country has been so short, and my experience so little, that I can form no judgment of the truth of this observation: it is an appeal to the notoriety of the dispositions of the natives. You have been resident long in the country: some I see who were born here; you know how far it is true, therefore I leave it entirely to you.

Mr. Brix has communicated to me the following observations:

'Improbability of the bond's being
'forged, from its being conditional only;
'for which there could be no necessity
'if it was forged, as it rendered the
'obligation less strong, without any
'apparent reason.'

It certainly would have been as easy to have forged an absolute bond. But there is no evidence when the bond was forged, if it was forged: it might have been after the payment of the debt due to Bollakey Doss: it might be to give an air of probability to it. But this is matter proper for you to judge upon.

'From the circumstance mentioned
'therein of the jewels being robbed, as

'that very circumstance lessens the va-
'lue of the obligation, it might entitle
'the deceased for his representatives to
'relief in equity.

This circumstance of mentioning the jewels is undoubtedly one that makes the transaction very suspicious, as there is no evidence given of any loss of jewels; and indeed the evidence that has been produced on that head goes a great way to prove that no such jewels had ever been lost. It is ingenious to turn this to the advantage of the prisoner. You will determine whether it can be so applied.

These are the observations made by the prisoner's counsel: you will consider them, together with the observations I have submitted to you upon them.

I shall now make some few observations on the evidence, both on the part of the crown and the prisoner; desiring, as I have frequently during the course of the trial, that you will not suffer your judgments to be biassed, or the prisoner to be any way prejudiced, from any thing that has past, nor by any matter whatsoever, which has not been given in evidence.

The evidence on the part of the crown to support the actual forgery, is that of Mohun Persaud, who says, that Maha Rajah Nundocomar declared, that he had prepared or drawn out three papers, the amount of one of which was 48,021 rupees, which is the amount of the present bond, and is applied as a confession of the actual forging; but as the confession may bear a different interpretation, there being no distinction in general made in the interpretation of the evidence, between writing or causing to be wrote, drawing or causing to be drawn, it may mean, that he caused Bollakey Doss to draw or prepare the bond, and therefore I think the first would be a hard and rather a forced construction of his words; and indeed he did not actually specify this bond. Comaul O Deen also gives evidence that will apply to the forgery. Maha Rajah Nundocomar told him, that he had himself fixed Comaul O Deen's seal to the bond; and he proves a requisition from Maha Rajah Nundocomar, to give evidence, That he was a witness to the bond, and makes him promises if he will. This is the evidence of the forgery; but I think it will be more necessary to attend to the evidence in support of those counts which I have said the evidence may be applied to, and which charge the publication with an intent to defraud.

The evidence which applies to the actual forgery, applies likewise to the knowledge of its being forged. Mohun Persaud proves bond produced by Maha Rajah Nundocomar. A receipt of Maha Rajah Nundocomar for the Company's bonds, paid in satisfaction of the bond in question, and the actual satisfaction received by Maha Rajah Nundocomar.

Two witnesses depose, That the name purporting to be in the hand-writing of Sillabut, is not of his hand-writing. Sabboot Pottack swears positively to this: he says, He was well acquainted with his writing; and speaks as to the usual manner of his attesting which he says, is different to that on this paper.

Rajah Nobkissen, on the paper being shown him, swore positively, that it was not the handwriting of Sillabut; but afterwards retracted the positiveness of his opinion: but the circumstance of his immediate fixing on the three papers, which were before proved to be of Sillabut's writing, is a stronger proof of the knowledge of his hand-writing, than any positive oath.

I must again caution you against receiving any impression unfavourable to the prisoner, from the hesitation and doubts or exclamations of this witness, or from any other circumstances except what he actually deposed to.

Both these last witnesses agree, that the hand to this bond is better than Seellabut's hand.

Other circumstances are adduced to draw an imputation on this business. An account subsequent to the date of the bond, which is in 1772, is produced to show, that Bollakey Doss was at that time indebted to Maha Rajah Nundocomar only in the sum of 10,000 rupees;

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but I think no great stress can be laid on that, as it contains a reference to such other debts as may appear by his books.

The Counsel for the Crown have proved, that a draught for a large sum of money was paid at Benares, about the time of the bond given, on the credit of Bollakey Doss, in favor of lord Clive. This was adduced for the purpose of showing Bollakey Doss to be at that time in good circumstances, and to infer from thence in probability of his entering into this bond: but I think it proves no such thing; a much larger sum would no doubt have been paid on lord Clive's credit alone; and it is certain, that Bollakey Doss was at that time a debtor to Maha Rajah Nundocomar.

There is another circumstance; That Bollakey Doss had never mentioned either the deposit of the jewels, or the loss of them; and that there is no entry of it in his books.

Comaul O Deen produced a paper with the impression of his own seal, which he swears to be in the possession of Maha Rajah Nundocomar: you before said, you thought it to be the same with that to the bond; you will accurately examine it; I have not; I am told, there is a flaw in both the impressions.

Comaul O Deen accounts for his seal being in the possession of Maha Rajah Nundocomar, and swears he has not received it back: his evidence is supported by Coja Petruse, whose character you will know, and Moonshy Sudder O Deen, to whom he repeated the conversations with Maha Rajah Nundocomar, when they had recently past; you know the practices of the natives and whether it is probable, as the counsel for the prisoner has suggested, that this is a deep-laid scene of villainy.

The character of Comaul O Deen was enquired into from Coja Petruse, and you have heard his answer.

Subornation of perjury was endeavoured to be fixed on him by the evidence of *Hussein Alli*; but as to Cawda Newas, nothing was proved: as to the seal-cutter his conversation with him seems rather to strengthen than impeach his credit.

This bond was found cancelled among the papers delivered into the Mayor's court, as belonging to the estate of Bollakey Doss; but the papers of Pudmohun Doss and Bollakey Doss were mixed.

This is the substance of the evidence for the crown; and no doubt, if the witnesses are believed, whatsoever you may think of the forgery, there is evidence of publication, with knowledge of forgery.

On the other hand, if you believe the witnesses for the prisoner, a most complete answer is given to the charge.

There are no less than four witnesses present at the execution of the bond by Bollakey Doss, three of whom had been privy to a conversation at Maha Rajah Nundocomar's, when the consideration of the bond was acknowledged by Bollakey Doss: the same persons prove the attestation of the bond by the three witnesses thereto, who are all dead.

The brother of Matheb Roy is produced, who says, that Matheb Roy was well known to Huzree Mull and Cossinaut: Huzee Null and Cossinaut did know a Matheb Roy; but it is clear, from their description of the person, that it is not the brother of the witness at the bar. However, Cossinaut gave an account of the family of the man he knew, whose father was Bungoo Loll, but said, there was another Bungoo Loll. It seems extraordinary that there should be two Bungoo Lolls, two Saheb Roys, and two Matheb Roys, in two different families: however, there is no doubt of the existence of two Bungoo Lolls and two Saheb Roys; the improbability then decreases, and both Tage Roy and Roopnerain swear to the existence of the other Matheb Roy. It is extraordinary, however, that this man, who is described by his brother to be a poor man, and servant to a prisoner in the gaol, and was not known to Cossinaut or Huzree Mull, should be described by the counsel for the prisoner as a man of note and family, and as being acquaint-

ed with Cossinaut and Huzree Mull.

In contradiction to what Comaul O Deen had said, the defence introduces another Comaul; and all the four witnesses swear positively to his attesting the bond. He is proved by two witnesses to be dead; one Joydeb Cowbee saw a man going to be buried, and was told it was Comaul.

The other, Sheekear Mahomed, actually attended his funeral.

Comaul O Deen swears positively it is his seal, and these witnesses swear to the attestation by another Comaul. Joydeb Chowbee mentions a circumstance by which he knew it to be the funeral of Comaul: he asked, whether it was a funeral of a Bramin or a Mussulman? It seems, the mode of carrying out Mussulmen and Bramins differ. You must judge from his evidence, whether he must not have known whether it was a Mussulman or Bramin, without enquiry; indeed he has said, that he did; and the observation was so strong, that he after positively denies he ever said he made such enquiry.

As Comaul is said to have died in the house of Maha Rajah Nundocomar, it seems extraordinary, that no one but Sheekear Mahomed is brought to prove his actual death, it must have been easy to have brought many persons of Maha Rajah Nundocomar's family, especially as he mentions five persons by name that attended his funeral, besides cooleys; three indeed he has buried since, but there are two still alive. This must have been known to be very material, for this is not the first time that Comaul O Deen has given evidence concerning his seal.

It is admitted on both sides, that Seelabut is dead. It is remarkable, that no account whatsoever is given of the Mour who wrote the bond: he would have been a material witness: there is no proof whose writing it is: it is proved, that Bollakey Doss had at that time a writer whose name was Balkissen, who is dead: there is no evidence that it was of his hand; he was, I think, known to one of the witnesses to the execution of the bond.

A witness says, that Seelabut was a Persian writer as well as Vakeel to Bollakey Doss, and Kissen Jaun Doss, seems to confirm it; being asked, What Persian writer Bollakey Doss had at that time? he answers, "He had one named Balkissen, and Seelabut also understood Persian." It is not said to be of his *writing*; and if Seelabut acted in that capacity, what occasion had Bollakey Doss to call for another writer?

There is no evidence of any particulars being mentioned to the writer who made out the bond, though it contains very special matter, except by one witness: all agree that no directions were given in the room before the people came from Maha Rajah Nundocomar to Bollakey Doss's; and all the witnesses, except one, deny any specific directions being given after. It is possible, he might have spoken to the Mour before his coming into the room, which the other witnesses at this distance of time might have forgot.

Though there are some variations in their evidence at the time of the execution, that is not at all extraordinary; what is most striking is, the very accurate memories which they preserve as to some circumstances, and their total forgetfulness as to others.

The most remarkable instance of their memory is the knowledge of the seals, which some of them swear to positively, only from having seen them three or four times on the fingers of the owners, from which (though the seals must be reversed when applied to paper, and though some of them do not understand Persian, and consequently not the characters engraved on the seal) they swear positively to their being able to know the impressions; and it is true, for they do point out to whom the impression of each particular seal on the bond does belong. Kissen Juan Doss, who must have seen Bollakey Doss's seal oftener than any of the witnesses, does not take upon him to remember the impression;

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and on being told the other witnesses did, he said, they had excellent memories; he was not blessed with such.

They are likewise uniformly accurate in describing the order in which the witnesses sealed and signed.

I shall make no observation on the variances of the witnesses to the execution; for, except in two instances, one of the witnesses, who remembered the sum in the bond, from its being explained in a language he did not understand, the other, Sheekear Mahomed, is the only witness that spoke with precision as to the sum. You heard him deliver his evidence, and will form your own judgment on that and on his whole evidence, in which he affirms and denies the same thing in the same breath.

As to the other, it was suggested, that the same words expressed the same sums in Moors and Persian, which drew on an enquiry; and we had the Persian and Moor words for the sums mentioned delivered in evidence; you will see how far you think they agree or disagree.

Nor shall I observe on the manner in which the witnesses on either side gave their testimony. You saw and remarked them. The jury having the opportunity to make their observations on the conduct of the witnesses, and of hearing the questions put as circumstances arise, is the great part of the benefit of a *vivâ voce* examination.

The defence does not attempt to prove either the deposit or the loss of jewels. And, indeed, Kissen Jaun Doss, on whose evidence I shall hereafter observe, says, 'That he never heard of 'such a loss; had it happened, he must 'have heard it; and a thousand people 'must have known it.' He speaks of the loss of jewels to a trifling amount, but those belonged to another person. This, I said before, is a suspicious circumstance. But if the jewels were actually deposited, of which there is no evidence, except what I am going to take notice of, the Kursa Nama: though they were not lost, Bollakey Doss might have told Maha Rajah Nundocomar that they were; and the Maha Rajah might give credit to Bollakey Doss; or might choose rather to take a bond than enquire further into the matter. It might possibly have been a fraud on Maha Rajah Nundocomar.

Meer Assud's evidence may be very material. He produces a paper, purporting to be a receipt given by Bollakey Doss to him, for valuable effects of Cossim Ali, delivered by the witness to Bollakey Doss, which had the seal of Bollakey Doss to it. The impression you will examine; you will find it to be the same as is on the bond. This was for the purpose of proving the correspondence of the impression of the seal on this receipt, with the seal on the bond; and by that means to prove, that the seal to the bond was the identical seal of Bollakey Doss, not one that was forged. This transaction was said by the witness to be when Bollakey Doss was with the army at Durghotty. It seems clear beyond doubt, from the date of the receipt, from the place the army was then in, and from the circumstances that both Cossim Ali and Bollakey Doss were in at the time the receipt bears date, that the receipt could not have been given by Bollakey Doss, and that the whole is a fiction.

A very striking observation arises from this; it may account for the witnesses remembering the seals so accurately. Tage Roy says, He is in possession of Matheb Roy's seal. The seal of Comaul O Deen is proved to have been in the possession of Maha Rajah Nundocomar; and the person who fabricated this receipt must have had that seal which made the impression on the bond and the receipt. If the witnesses by any means have seen those seals, it is no longer surprising that they should be well acquainted with the impressions. This is a strong observation; but it is but an observation; I would have you consider it deliberately and maturely before you adopt it.

Kissen Jaun Doss delivered all his evidence, till this morning, with such simplicity, and with such an air of candour and truth, that I gave full assent to

every thing he said; and I am extremely chagrined that there has arisen any cause to suspect any part of his evidence. He mentioned a paper, which he calls a Kursa Nama, in which the whole of this transaction was wrote, and which was acknowledged and signed by Bollakey Doss. Though the entry made in the book after the death of Bollakey Doss, by order of Pudmohun Doss, and purporting to be in the lifetime of Bollakey Doss, carried marks of suspicion with it; yet, I own, Kissen Jaun Doss had so completely gained my confidence, that I gave implicit credit to him. Many attempts were made to establish it in evidence, which failed of legal proof; but as I thought so well of Kissen Jaun Doss, and as it would have been extremely hard, if such a paper had existed, that the prisoner should be deprived of the benefit of it, I said (having first asked the consent of my brethren,) that, though it was not strictly evidence, I would leave it to you to give such weight to it as you thought it deserved. I still leave it to you; and if you believe that such a paper ever existed, it would be the highest injustice not to acquit the prisoner.

Attempts were made to bring this to the knowledge of Mohun Persaud; and if it did exist, and was in the knowledge of Mohun Persaud, this prosecution is most horrid and diabolical. Mohun Persaud is guilty of a crime, in my apprehension, of a nature more horrid than murder.

But, I own, what passed after the counsel for the prisoner had closed his evidence, has very much weakened the confidence I had in Kissen Juan Doss. The counsel did not desire that he should be called, assigning as is usual for their reason, that they had forgot to examine to any particular point which was contained in their instructions; but we are informed that the Maha Rajah had something to say. All that he says is, That he desires Kissen Juan Doss may be further interrogated as to the Kursa Nama. The question then is immediately put to him, Whether he ever explained the Kursa Nama to Mohun Persaud? and then he gives the account of Mohun Persaud's having seen it at Maha Rajah Nundocomar's.

When he is examined to the reason of his not having told it before, all that simplicity, all that air of truth and candour, which we had remarked in him, instantly vanished; his looks were cast down, his tongue faultered, he prevaricates, he contradicts himself, he did not seem the same man. 'He did not tell, 'because he was not asked.' 'He did 'not mention it to Maha Rajah Nundo-'comar in his letter, because he was 'afraid of Mohun Persaud.' 'He did 'not mention, because he did not recol-'lect it.' 'He did not deliver it in evi-'dence, because afraid of Mohun Persaud.' Mohun Persaud is a great man. He was not afraid to write the letter. He did not shew the letter to Mohun Persaud: why should he be afraid to insert this circumstance? If he now stands in so much fear of Mohun Persaud as not to mention this in his evidence, was he so much afraid of him when he voluntarily and directly confronted him as to the army books?

All this fear arises from no recent threat: it is in consequence of a conversation at the distance of some years.

It is for you to determine how far he really stands in awe of Mohun Persaud, and what the effects of that intimidation was when he delivered his evidence.

It is strange, as the witness was so often examined, and so particularly to this Kursa Nama, that Maha Rajah Nundocomar never before suggested this matter to his counsel.

If this latter part of Kissen Juan's evidence is true, he must be either guilty of perjury or very strong prevarication in his former evidence. Being asked as to Mohun Persaud and Gungabissen's knowledge of the entry made from the Kursa Nama, He says, 'I cannot say 'that Mohun Persaud and Gungabissen 'knew of it at the time of the entry; 'they knew of it afterwards. How can 'I tell when they knew of it first? They

'must have known it from the papers in 'the Dewanny Audaulet; they were all 'called for there. I should tell, if I 'knew Gungabissen or Mohun Persaud 'knew of the entry.'

He must have known it was more material to prove that they knew of the Kursa Nama itself, in which the particulars of the account which formed the sum in the entry were wrote, and which Bollakey Doss had signed. But he presently afterwards positively says, That Mohun Persaud and Gungabissen were not acquainted with the accounts.

In another part of his evidence, he says to Pudmohun Doss, 'Make my mind 'easy about the bond we are now paying,' or (for there was a doubt in the interpretation) which we have paid.'

The time that this explanation was made at Maha Rajah Nundocomar's is not ascertained; but it must have been before the payment of the bond; for afterwards it could be of no use. If then Kissen Juan Doss had before seen this Kursa Nama, and explained it to Mohun Persaud, why did he demand that his mind should be made easy about the bond? and how was it made easy, only by the production of a paper that he had seen before.

I am much hurt, to be obliged to make these observations on the evidence of a man that I entertained so good an opinion of. I must desire you to recollect, with regard to this observation, and every one that I submit to you, that you are to make no further use of them, than as they coincide with your opinions and observations; and when they do not, you should reject them; for it is you, not I, that are to decide upon the evidence.

Attempts were made, by means of Monohun and other witnesses, to impeach Mohun Persaud, by particular facts, of attempts to suborn, and by general character. You must judge how far they have succeeded. They totally failed in the same attempts, as to Commaul O'Deen.

It is to be observed, likewise, that no person has been called to impeach the witnesses brought by the defendant.

There are many observations to be made in favour of the prisoner; and I am sure your humanity will prompt you to enforce them, as far as they will bear.

I before said, that the defence, if believed, was a full refutation of the charge; it is not only so, but it must fix an indelible mark of infamy on the prosecutor.

There are four positive witnesses of the actual execution of the bond by Bollakey Doss.

In opposition to Commaul's evidence, there are as many to prove, that the witness attesting was another Commaul.

Matheb Roy was not mentioned by the evidence for the crown. Four witnesses saw him attest it; and two other witnesses, one of them his brother, likewise prove that there was such a person.

In opposition to Rajah Nobokissen and Pattock, who swear the name Sillabut to the bond, is not of Sillabut's hand writing; four witnesses swear positively to the having seen him write it.

Much depends in this prosecution on the evidence of Mohun Persaud: you must judge how far his credit has been shaken: most of you know him: you must determine how far he deserves credit; and how probable it is, that he would, through malice, or any other corrupt motive, accuse an innocent person of a capital crime. If you think him capable of it, you should not give the least attention to his evidence. He swore positively to the bond produced by Maha Rajah Nundocomar, and for which the Company's bonds were given, being the same bond that was produced in evidence; he said, he knew it from circumstances, but did not explain what those circumstances were; this I mention as going to his credit only; for the whole defence proceeds on identifying this bond, and proving it a true one.

You will judge how far he is contradicted by Kissen Juan Doss, as to the army books; and which of the two are to be believed.

An imputation was attempted to be thrown on Mohun Persaud, for preventing Gunga Visier from attending, who was said to be able and willing to ap-

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pear as a witness: but that has been cleared up, to the full satisfaction of us; and, I do not doubt, to your satisfaction likewise. He could not be called by the prosecutor, on account of his interest; and no prejudice should accrue to the prisoner, for not calling him, for the same reason.

The counsel for the prisoner have urged the hardship of this prosecution being brought at this distance of time. You have heard when Mohun Persaud first suspected the forgery; and when, by Commaul's declaration, he had reason to be confirmed in the suspicion.

You have heard, when the papers were delivered out of the Court; if there has been any designed delay, and you think Mohun Persaud had it in his power to carry on an effectual prosecution before he has; it is a great hardship to Maha Rajah Nundocomar, especially as the witnesses to the bond are all dead; and you ought to consider this among the other circumstances which are in his favour. Though, to be sure, this hardship is much diminished, as there were so many witnesses still alive, who were present at the execution of it.

There are two pieces of written evidence relied on by the prisoner: one, the entry in the book from the Kurra Nama, on account of the agreement of the sums; and you will find that the sums said by Kissen Juan Doss to be contained in the Kurra Nama; *viz.*

Durbar expences ...	6,000	Rs
Bond Batta and premium	69,630	7
Do. amount to the sum of	75,630	7

which is the sum in the entry.

The other is the account delivered by Mohun Persaud and Pudmohun Doss, subsequent to the account delivered in by Pudmohun Doss, in which Pudmohun Doss had taken credit for this sum; and the subsequent account likewise contains it.

I do not think much can be drawn from this, for the sums had, as Mohun Persaud says, been paid, and therefore they certainly would take credit for them, to prevent their being charged with them; this they would do, were the monies properly or improperly paid.

There is certainly great improbability that a man of Maha Rajah Nundocomar's rank and fortune should be guilty of so mean an offence for so small a sum of money.

It is more improbable, as he is proved to have patronized and behaved with great kindness to Bollakey Doss in his life-time, that he should immediately after his decease plunder the widow and relation of his friend.

There does likewise appear to have been a suit in the Audaulet, which must have been a civil suit; but it does not indeed appear that Mohun Persaud was a party; and, indeed, for what reason I know not, neither side have thought fit to produce the proceedings.

I have made such observations on the evidence as the bulk of it, and the few minutes I had to recollect myself, would allow me to make.

You will consider the whole with that candour, impartiality, and attention, which has been so visible in every one of you during the many days you have sat on this cause.

You will consider on which side the weight of evidence lies; always remembering, that in criminal, and more especially in capital cases, you must not weigh the evidence in golden scales; there ought to be a great difference of weight in the opposite scale before you find the prisoner guilty. In cases of property, the stake on each side is equal, and the least preponderance of evidence ought to turn the scale; but in a capital case, as there can be nothing of equal value to life, you should be thoroughly convinced, that there does not remain a possibility of innocence before you give your verdict against the prisoner.

The nature of the defence in this case is such, that, if it is not believed, it must prove fatal to the party; for if you do not believe it, you determine, that it is supported by perjury, and that of an aggravated kind, as it

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attempts to fix perjury and subornation of perjury on the prosecutor and his witnesses.

You will again and again consider the character of the prosecutor and his witnesses, the distance of the prosecution from the time the offence is supposed to be committed, the proof and nature of the confessions said to be made by the prisoner, his rank and fortune. These are all reasons to prevent your giving a hasty and precipitate belief to the charge brought against him; but, if you believe the facts sworn against him to be true, they cannot alter the nature of the facts themselves. Your sense of justice, and your own feelings, will not allow you to convict the prisoner, unless your consciences are fully satisfied beyond all doubt of his guilt. If they are not, you will bring in that verdict, which, from the dictates of humanity, you will be inclined to give; but, should your consciences be thoroughly convinced of his being guilty, no consideration, I am sure, will prevail on you not to give a verdict according to your oaths.

The jury retired for about an hour; and brought in their verdict, Guilty.

"*Memoranda*, 1775.

"July 24th. Signed the Calendar containing the order for the execution of Nundocomar. He was hanged. I think the day was Saturday, August 12th, but I am not sure."

PROCEEDINGS AFTER THE VERDICT.*

Sir J. Stephen is very positive that sentence was not passed on Nundocomar on the 16th June, but it appears that his only reason for this is that Farrer afterwards moved for arrest of judgment He says that to move in arrest of judgment, after a man was sentenced to be hanged, would be like moving in arrest of execution after he had been hanged. I admit my unfamiliarity with the technical language of English criminal law, and that I may have made a mistake here, but Sir J. Stephen's reasoning does not seem to me conclusive. Farrer was absent when the verdict was brought in, and sentence may have been passed in his absence, and yet he have been allowed afterwards to move against it. I remember a case in the Calcutta Supreme Court; it was the famous one of Sib Krishna Banerjee, and my impression is, that in it sentence of transportation was passed on one of the prisoners for subornation of perjury, and that immediately afterwards his counsel was allowed to move in arrest of judgment, the Judge ordering that the sentence should not be recorded. In Nundocomar's case, apparently, no sentence was ever recorded, that is, no judgment was ever entered up. All that occurred was that the Judges signed the calendar†, and it appears from Hyde J.'s note, quoted by Mr. Belchambers, that this was not done till 24th July. The calendar contained other cases besides that of Nundocomar, and this partly explains why Chambers signed it, even though he objected to the hanging of him. Hyde's note is corroborated by Yeandle the jailor's affidavit, if any corroboration is needed, for Yeandle says that the interval between the condemnation and the execution was about twenty days. I find, too, that the Nawab Mubarak-ad-Daula petitioned the Council by a letter, dated 21st June, though not received till the 27th idem, to suspend the execution of Nundocomar till the pleasure of the king of England should be known, which shows that sentence had been already passed. But if Sir J. Stephen is correct, sentence was not passed before the 23rd or 24th June. I submit, too, that Farrer's phrase, *definitive sentence*, would seem to point to a previous sentence, and to imply that the one now passed was final.

There is another circumstance which seems to indicate that sentence was

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* Beveridge's trial of Nundocomar p. 285.

† Impey said in his speech that the calendars were the only warrants for execution in Calcutta. This may partly account for the delay in Nundocomar's execution. The calendar would not be signed till the end of the Assizes, and that was not till the middle of July.

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passed on 16th June. The original indictment is still in the High Court. It is an immense sheet of stout paper, and appears to contain the charges both in Persian and in English. The English writing, however, is so faded as to be almost, if not quite, undecipherable, while the Persian, which is entered above each court of the English, is as black and clear as if it had been written a few years ago. I commend this fact to the attention of Sir Louis Jackson, who thinks that the jury were justified in feeling insulted at being asked to believe that a Persian document which looked recent had, in fact been written six or seven years ago.

Sir Louis Jackson might as a griff (he tells us himself he was a young man at the time) have believed that a forger would fabricate a letter and its envelope, and yet not see that the one fitted into the other; but I should have thought a retired High Court Judge would have known better. However, this is a digression. The point I want to refer to is, that at the top of the indictment are written the words "Plea not guilty" and "verdict guilty."

Then on the back of the indictment there were the names of the witnesses for the prosecution, but they are now undecipherable. Also on the reverse side and at the top are the words guilty Sus. per coll. The latter three being very faint. Now these abbreviated words (for suspendatur per collum, let him be hanged by the neck) were surely written by the Clerk of the Crown or by the prosecuting counsel, and I should think the presumption was that they were written immediately after the verdict. They are neither signed, nor dated, so far as I could observe.

I do not suppose that the Judges would write the words in such a place, and we know, indeed, that what they did was to sign the calendar, *i.e.*, the list of all the sentences passed at the Session.

In the *interim* between the verdict and the execution, Farrer did what he could for his client by moving in arrest of judgment, by filing a petition of appeal, and by trying to get the jury to recommend the prisoner to mercy.

The circumstances of this last attempt are very remarkable. Farrer first applied to the foreman, Mr. Robinson, but that gentleman, in reply, begged Mr. Farrer to reflect on the nature of a British juryman's oath, and said that the opinion of the jury must have been such at the time of giving their opinion as never could with propriety be altered. He went on to say that he had every tender feeling with which the human heart could be impressed for the convict, both at and after his trial, nor would the strict requisition of a positive law that in many cases obliges a jury, in conformity to the tenor of their oath, to find a prisoner guilty, have prevented him and his brethren from recommending him to mercy had their consciences admitted such an idea. He wound up by observing that the very offering of such a petition to him to sign very much hurt his feelings, especially as it was on a subject which in his opinion no one had a right to interfere in. Mr. Robinson was not contented with relieving his feelings by this rhodomontade. He had the matter brought before the Chief Justice, who severely reprimanded Farrer when he next appeared in Court. He told him that his conduct (in trying to get the petition signed) was derogatory to his professional character, and that his duty to his client ended with the trial. One juryman, I am glad to say, signed the petition. His name was Edward Ellerington.

Sir J. Stephen admits (I, 230) that Impey's behaviour on this occasion was wrong and harsh. He worse remains behind. We learn from Impey's letter of 20th January 1776,* to the Earl of

* (Published in Report on Touchel's petition, references to general appendix No. 3.)

Impey in his letter links the fact of Farrer being Nundocomar's Counsel, and writes of him as the Company's Advocate, his object being to insinuate that it was the majority who had set him on to interfere with the Court.

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Record, that Robinson did not come direct to him with his complaint. He first went to Mr. Belli, and it was Belli who sent on the correspondence to the Chief Justice. He did so with an introductory note in the following terms:—"Mr. Belli presents his respects to Sir Elijah Impey, and at Mr. Robinson's request encloses him a second address from Mr. Farrer to Mr. Robinson, with Mr. Robinson's reply to it—the word victim in Mr. Farrer's address is very remarkable. This business gives Mr. Robinson much uneasiness; and he hopes Sir Elijah will permit him to make a complaint to him, if Mr. Farrer persists in his solicitations." The important question then arises, who was Mr. Belli? The answer is, that he was Hasting's private secretary and a member of his household! Apparently he came with Hastings from Madras, for we find him attesting in 1772 Hastings' covenant. But at all events he was in Hastings' employment from 1772, for Hastings said in December 1776, that Belli had then been a private dependant of his for more than four years. On 5th January 1775, we find him writing to Goring in the capacity of Hastings' secretary. The occasion was somewhat remarkable as tending to show that Hastings had then begun to side with the Judges. One Didaru had obtained a decree in the Revenue Court for the possession of a house and took out execution. Kachlu Bibi, the defendant, complained to Lemaistre, and he, it was said, ordered that the house should be restored to her. The Calcutta Committee of Revenue asked the Governor how they should proceed, and in reply Belli wrote:—"The Governor further directs me to acquaint you for your present guidance that you are not to controvert the authority which the Supreme Court of Judicature may think fit to exercise." (Bengal App., p. 581.) The fullest reference, however, to Belli is contained in the debates in Council about his agency for victualling Fort William. On 4th November 1776, Hastings brought forward his plan for victualling the fort, and Clavering drew up a minute objecting to the plan. Hastings, in December 1776, rejoined as follows: "In the opinion given by General Clavering, upon my proposal for laying up a store of provisions for the Garrison of Fort William, his usual temper has displayed itself by an attempt to vilify the plan with hard and course invectives. Instead of offering any objections to the propriety of it, artifice and affected zeal for the Company's prosperity, projects of private benefit, and jobs to serve a private defendant are the expressions and reas nings by which a member of this State examines the utility of a pubiic measure. He has perhaps heard, or if he has not, I will now declare that I do mean to propose a gentleman of my own family for this trust; I mean my secretary, Mr. Belli; not because he is a private dependant whose services and fidelity for more than four years past have received no higher reward than a salary of Rs. 300 a month, but because I think the due discharge of this trust of such importance, and so immediately my own province,* that I wish to employ in it the person on whose honour I can place the best dependence." (Minute of 2nd December 1776.) To this, Clavering made the following rejoinder: "Without the express authority of the Governor-General, I could not have ventured to suppose him capable of proposing a person to exercise so great a trust who is not in the Company's service, and still more, that this person should be his own secretary. Upon a rough calculation, I conjecture the cost of the provisions to be furnished will not be less than the three lakhs of rupees, and consequently the agent's commission, at 30 p. c., is Rs. 90,000." The Court of Directors, by their letter of 28th December 1778, ordered that the commission should be reduced to 20 p. c., but by that time

* By the Directors orders of 29th March 1774, the Governor-General was Commander-in-Chief of the Fortress and Garrison of Fort William. Hastings found this provision of use when Clavering tried to wrest the Government from him.

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the agency had been converted into a five years' contract! The agency and the contract given to Belli were one of the subjects of the 6th article of charge against Hastings. The case was surely a gross one, for three merchants—Crofts, Robinson, and Sullivan—had stated that 20 p. c. was a sufficient commission for the agent, but Hastings gave 30.

When the agency was converted into a contract, Francis wrote in his journal (9th August 1779): "Contracts for Dick Johnston and Belli for five years. O! Monstrous. I declare I will not sign them."

On 2nd September he notes: "A most impudent, rascally minute from Hastings about Belli's cantract."

Mrs. Fay tells us that Hastings' character was never to desert a friend or forgive an enemy.* We have an instance of the latter characteristic in his letter of 1788 about Nundocomar, and the former appears in his continued solicititude for Belli. Thus, on 15th October 1783, he writes regretting that he has been obliged to accommodate a former engagement to poor Belli to make room for Mr. Dent. He consoles himself, however, with remarking that Belli had an office with which he is satisfied, though much inferior to the other (a salt agency). Apparently the office which satisfied Belli was the Postmaster Generalship. † (Setonkarr's Selections from *Calcutta Gazette*, p. 4.) In a letter of 10th November 1780.

Hastings joins Belli with Elliot, Bogle, Sumner, and D'Oyley, as all "men of eminent merit, and universally respected, but unfortunately known to have attached themselves to me."

A great deal of unnecessary sympathy seems to have been expended on Belli by his friends. Price also calls him "poor Bell," and after telling his readers in his "Observations on Macintosh's Travels" that nothing hurts Hastings so much as to be asked by his friends for contracts (!), he says: "Poor Mr. Belli (a private secretary to the Governor-General) was urged on by a young man who wrote under him in the office to get in proposals for a contract, and obtained one; whilst the young man lived and managed the business, ruin was kept at a distance; but no sooner was he dead than Mr. Belli discovered his mistake: the contract is now held by some one else; and he, poor man, has retired in a state of bankruptcy, with a ruined constitution and a broken heart, to Chittagong to pine out the remainder of his life (p. 89). Happy Belli, to have the sympathy of a Hastings and a Price! But if the latter's account be correct, what becomes of Belli's special qualifications for so important a trust?

These extracts abundantly prove Belli's connection with Hastings, and his letter to Impey shows at the very least that Hastings' friend and protegè was exerting himself to thwart the endeavour to have Nundocomar respited. But I think that they prove more than

* Hastings could forgive, or at least say that he forgave those whom he had injured, though, according to Lord Macauly, this is very rarely done, the principle being Odisse Queen Lacseries. After breaking Clavering's heart by his duplicity and subterfuges, Hastings was kind enough to write: "I in my heart forgive General Clavering for all the injuries he did me." Gleig. III 129.

† My friend Dr. Busteed informs me that a John Belli was Assay Master at the Calcutta Mint in 1795. If this was the private secretary of 1775, he must have been a regular Graeculus esuriens. It probably was, for we know from Hastings trial that Belli returned to India during the progress of it, and so could not be examined. He was made a Company's servant by a letter of the Court of Directors, dated 22nd December 1778, and married a Miss Stuart at Lucknow in 1781. (Dr. Busteed.) "Mr. Belli came to England in 1785, and continued some years, to be examined as a witness, but the managers not choosing to call him, and Mr. Hastings unwilling to detain him longer at a manifest inconvenience, he returned in the year 1793 to Bengal. He had remained beyond the period prescribed by law, and it was necessary that he should be reappointed to the service by a vote of three-fourths of the Directors and three-fourths of the Proprietors. He had the pleasure and satisfaction, however, of being unanimously reappointed by both these respectable bodies." (Thurlow's Speech in the Debates in the House of Lords on Hastings' Trial, p. 271.)

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this. I think it is impossible to doubt that Belli went to Impey with Hastings' knowledge, if not by his express order. Belli in himself was nobody. He was not even a Company's servant, and was a hanger-on on Hastings. It cannot be supposed that Robinson would go to him and solicit his intervention, unless he regarded him as the mouthpiece of the Governor. Robinson's own position was much superior to Belli's. He was a leading merchant, and had been Mayor of Calcutta. He had, also at one time, been in the Company's service, and he was, according to Price, a private friend of Hastings. I hold, therefore, that he went to Belli simply because he was the private secretary. It is noticeable that the words of Belli's letter imply either that he had written once before to Impey and sent him Farrer's first address, or that Robinson had gone himself to Impey, and that this not being effectual he now had recourse to Belli. I leave my readers to form their own conclusions from the affair, but I must express my own opinion that Belli went to Impey at the orders of Hastings. It will be remembered that Hastings only denied that he had taken any part in the prosecution of Nundocomar, and that such a denial would not cover the case of an interference after the prosecution was closed. Indeed, Hastings' denial was made in July, and Belli's letter was written on 1st August. He repeated his denial on 15th September, but he only said, "I have declared on oath before the Supreme Court of India that I neither defended nor encouraged the prosecution of Maha Rajah Nundocomar. It would have ill-become the first Magistrate in the settlement to have employed his influence either to persuade or dissuade it." This does not deny a use of his influence after the trial to prevent a respite. Observe, too, that Hastings admits that he had influence and could have exerted it.

Finally, I would observe that this is a case in which one cannot exculpate both Hastings and Impey. If he chooses to believe that Belli was merely a private individual, and wrote of his own motion and without any communication with Hastings, then Impey's conduct in receiving and acting on the letter was very improper. It is conceivable that Chief Justice might, in an executive matter and after the trial had closed, receive a letter from the Governor, but it is difficult to see what excuse there could be for his receiving one from an obscure individual like Belli, who, unless he wrote as Hastings' Secretary, had no locus standi whatever.

Sir J. Stephen asserts (I, 237) that no one showed the smallest sympathy with Nundocomar, and that the only petition which appears to have been presented was one by Radha Charan, his son-in-law. These are positive statements, and he is still more positive in censuring Macaulay for speaking of Impey's refusal to respite Nundocomar (II, 64 note.) He says: "A refusal implies a request. Lord Macaulay would have been puzzled to answer the question, who asked for a respite? I believe that no one did so, and it makes a great difference." No doubt Macaulay would have been puzzled to reply if he had not based his statement upon some more stable authority than his own opinion. Probably he had consulted the Bengal Appendix (no very inaccessible book), and had there found the petition for Nundocomar's respite represented by the Nawab of Bengal, Mubarak-ad-Daula. It was presented to the Councils, and was forwarded by Hastings and the other Councillors to Impey. The date given is 27th June 1775, but the copy of the Persian petition, which I have received through the kindness of Mr. B. L. Gupta, is dated the 16th Rabias-Sâni, which corresponds to 21st June 1775. Further, I am able to state that Impey was angry with Nawab for making the petition, and wrote to him telling him that he was wrong to write to the Council, as it had nothing to do with the Supreme Court. In reply, the Nawab wrote on 11th July, excusing himself. Sir J. Stephen is very severe on the majority of the Council for not

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interfering to save Nundocomar's life. He says that on 1st August they had it in their power to do so by simply voting, in their capacity of a majority of the Council, to send to the Judges the letter which Farrer had drawn; and that if they at that time believed that Nundocomar was innocent, and on the point of being judicially murdered, they made themselves accomplices in the murder. He also says that if the Council had written to the Judges that Nundocomar had charged Hastings with corruption, and that it was of the highest importance that the charges should be investigated, and that Nundocomar's execution would prevent this, the Judges must have granted a reprieve. Francis had explained that the majority did not apply to the Court, because the latter had told them that it was unconstitutional to address them by letter. Sir J. Stephen is very wrought with this explanation, and says: "Francis must either have overlooked or wilfully refused to notice the broad distinction between writing a letter to the Court on a matter judicially before them, and writing on a matter in which they had to exercise an executive discretion. The latter is as natural and proper as the former is unconstitutional. The Home Secretary in England constantly corresponds with individual Judges as to applications for pardons. He would never dream of writing to a Judge as to the exercise of his judicial duties." (I, 236.)

It appears to me that Sir J. Stephen has here overlooked a broad distinction. The Home Secretary represents the Sovereign, and so can correspond with Judges about pardons, which fall within the Sovereign's prerogative. But Impey and his brethren were far from admitting that the Council represented the Sovereign. In their eyes, the Councillors were only servants of the East India Company,* and it was the Judges who represented the King. The majority did try to interfere in an executive matter, by asking the Chief Justice to mitigate the rigour of Nundocomar's imprisonment. With this view they sent Nundocomar's petition to him. Impey requested them to instruct Nundocomar to present his petitions in future direct to the Judges. In reply, the Councillors said: "We cannot refuse to receive any petitions presented to us, and if they relate to the administration of justice, we conceive we are bound by our duty to communicate them to the Judges." On 30th May, Impey rejoined as follows: "As to communicating petitions to the Judges, I apprehend that no Board even of the highest authority, in England could refer any matter either to a Court of Justice or to any Judge thereof otherwise than by suit lawfully instituted." Impey's view was affirmed by all the Judges on 23rd June in connection with Radha Charan's case.

Sir James Stephen (as has been already said) remarks that the only petition shown to have been presented was one by Nundocomar's son-in-law, Radha Charan. This is misleading. It is true that the petition was presented by Radha Charan, but it was not his own but that of the Nawab of Bengal, as whose vakeel he presented it. The petition was received on 27th June, and was as follows:—

"If several transactions of former times are to be tried by the Act lately transmitted from the King of Great Britain, it will occasion trouble and ruin to the inhabitants of this country. The affair of Maha Rajah Nundocomar, which is now before the Court, is really hard and rigorous. For should the crime of which he is accused be proved against him in the said Court, the custom of this country does not make deserve him of capital punishment; nor, as I am informed, was life formerly forfeited for it in your own country; this has only been common for a few years passed. The Maha Rajah has transacted affairs of the greatest importance. When Mir Qasim Ali had taken the resolution to ruin and expel the English, the Maha

* In a letter of 2nd August 1775 to the Court of Directors, the Judges speak of the Members of Council as "your servants."

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Rajah in particular exerted himself to the utmost with my father in supplying them with grain and money for the use of their troops.

"The services of the Maha Rajah on this occasion are well-known to the king of Hindoostan; certainly he never could have committed so contemptible a crime; people employed in important affairs will undoubtedly have many enemies and those who have been active in the affair of Nundocomar, have long been his declared foes. Taking, therefore, into consideration the welfare of the people, I beg in particular, with regard to this affair, that Rajah's execution may be suspended till the pleasure of His Majesty the king of England shall be known." Resolved that a copy of this translation be transmitted with the following letter to the Chief Justice and Judges of the Supreme Court of Judicature:—

"*Gentleman.*—We have this instant received a letter from His Excellency the Nawab* Mubarak-ad-Daula Mu-attaman-al Mulk Firoz Jang Bahadur, through the hands of Rai Radha Charan, his public vakeel, containing an intercession on behalf of Maha Rajah Nundocomar; we conceived it to be regular on our part to transmit it to you, and of which we shall inform the Nawab." This letter was signed by Hastings as well as by the rest of the Council, though, of course, these does not show that he approved of it. The Judges never answered this letter, so far as I know, and the following remarks show conclusively, I think, that they did not. In the course of the inquiry about Rai Radha Charan, Impey said on 6th July 1775:

"I cannot help observing a small circumstance. I have, since the claim made by the Council for Rai Radha Charan, received two letters from the Nawab directed to myself, and one original letter from him, directed to the Governor-General and Council, inclosed in a letter from them to the Court. *Though improper, we took no notice of that letter.* I had before received letter from him; they had the usual alqâb,† the same that is given to the first in Council. The letters to me since the dispute, to give him a higher air of consequence, make the alqâb much inferior. The same artifice is made use of in that sent to the Governor-General and Council. The alqâb sent to the Governor-General and Council is infinitely inferior to that formerly sent to the first in Council and myself. They best know whether at any other period they would have admitted a letter from him with that alqâb. They best know whether they in future are to be treated with the same inferiority. This observation will not be so striking to those who are not conversant with the customs and ideas of the natives, and do not know how tenacious they are of that address."‡

I think it cannot be doubted that the following letter from the Nawab refers to what Impey had written to him about his application in Nundocomar's behalf. The original was procured for me from the Nawab's palace by the kindness of Mr. Gupta, and I am indebted to the Hon'ble Syed Amir Hoosein for the translation of it:—

Copy of a letter of Nawab Mubarak-ad-daula Bahadur, Nawab Nazim of Bengal, Behar, and Orissa, to Sir Elijah Impey, Chief Justice, dated the 6th Jamadi-al-awal 17 Jalus (11th July 1775.)

* "The blessed of the State, the trustee of the country, kindling in war."

† Alqâb is the Arabic plural of laqâb, and means titles or form of address.

‡ Sir J. Stephen's statement that nobody sympathised with Nundocomar, is contradicted by the evidence of Mr. Farrer in 1781, who deposed that the execution caused general terror and dismay. This, too, was proved by the evidence of Major Rennel, Captain Cowe, Messrs. Mills, Baber, Goring, and Captain Price. Farrer said, in his evidence in 1788, that there was a petition by Sambhu Nath Rai, Nundocomar's brother, and that this was the first time he ever heard that Nundocomar had a brother. From a *kursinama* prepared for me in Murshidabad, I find that Shambhu Nath was the cousin of Nundocomar, being the son of Raghu Nath, the half-brother of Padma Labh the father of Nundocomar. It is worth ne-

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"Your letter in reply to mine has been received, and has pleased me much. It was stated therein that what was written about the trial of Maharaja Nundocomar has caused much surprise, for the officers of the Court of Justice do not hear the advice and accept the counsel of any other persons in such matter; and that there is no truth in what I have heard that the members of the Council have been written to with regard to this matter, because there is very great difference between the business of the Council and of the Court of Justice, and there is no connection between the two. Let the past be past. It would not be advisable to write about this matter again, for its repetition will cause displeasure to the officers of the Court of Justice. In all other matters, whatever has to be written should be written to the officer of the Court of Justice. It has been stated that the language of the letter which has been written, and the complimentary terms used in it, were, in comparison to those of the former letters, entirely unsuitable.

"Sir, what you have been pleased to write has been carefully perused. It ought to be mentioned, however, that, as the said Maharaja during the life-time of my deceased father served the English Company faithfully, and was never lacking in his efforts to promote their interests and peace, you were put to the trouble of considering a representation in his favour. For I and all the people of this country look up to you, gentlemen, for justice, and it is to you, gentlemen, to whom every person comes to submit an appeal. However, if this has caused displeasure, you will be pleased to forgive it. With regard to epistolary language and complimentary terms this well-wisher will always be pleased to exult your dignity."

In his defence on his impeachment Impey declared that he had no recollection of Mubarak-ad-Daula's petition, but said that even if it had been made, he had no right to interfere in judicial proceedings in Calcutta.

Impey also said that if the majority of the Council had made a representation to the Judges that there were probable grounds for the accusation of Hastings, and shown those grounds, there could be no doubt that the Judges would have respited Nundocomar.

Sir J. Stephen (I, 232) says that he believes this defence to be quite true!

I cannot think that Sir J. Stephen would have said this had he known of Mukbarak-ad-Daula's letter and of the way in which the Judges treated it. Mubarak sent his letter of intercession through the Council, and the latter forwarded it without a word of comment. Even this formal act, however, was censured by the Judges, who said that it was improper, and took credit to themselves for not having animadverted on it. How then would they have received a letter from the majority only (for of course Hastings would not have signed,) entering into argument and setting forth reasons for respiting Nundocomar? Certainly they would have treated it as a contempt of Court, especially when Impey had, on 30th May, declared *apropos* of an executive matter that no Board could communicate with a Court of Justice otherwise than by suit.

Further, it is clear from the Nawab's letter of 11th July that Impey censured him for writing to or through the Council. He told him that "the officers of the Court of Justice did not hear the advice and accept the counsel of any other persons in such matters," and then he rated him for not addressing him in proper style, which clearly shows that it was the letter about Nundocomar that Impey was referring to on 6th July.

Impey stated in a pamphlet (Impey's Memoirs, p. 335) that no application was made in favour of Nundocomar by the Council after his conviction.

This was either a mistake of Impey or it was a falsehood, or at least a sub-

ting that when Hastings enumerated, in his Benares Narrative, p. 8, the crimes of Chait Singh, he dwelt on the fact that he had, in June 1777, sent a man named Sambhu Nath with an express commission to Clavering. Thornton justly refers to this as an instance of the implacable and revengeful nature of Hastings. It is probable that this Sambhu Nath was the cousin of Nundocomar, for it is a family tradition that the cousin was in Chait Sing's service. Here, then, we have another instance of the *æternum servans sub pectore vulnus*. That Chait Singh should send an ambassador to Clavering was very bad, but that he should employ a relative of the deserted Nundocomar on the work was a vinegar upon nitre.

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refuge. Mubarak-ad-Daula's application for a respite was certainly forwarded by the Council after the conviction, and though the Judges were too indignant to answer it, Impey's letter to Mubarak shows how he regarded it. The Council would have met with a warmer rebuff than mere silence had their letter expressed any sympathy with Mubarak's letter.

Nundocomar having been hanged, the next thing to be done was to justify the act in England. For this purpose Alexander Elliot, who had acted as interpretor during the trial, was forthwith sent home entrusted with the publication of the trial. Elliot was secretary to the khalsa (the exchequer or Revenue office), and Hastings' permission was necessary for his departure. Hastings gave it and took part in sending him—another link in the chain of evidence connecting him with Nundocomar's case.

"I wish," he writes to Macleane (Gleig, II, 48), "I had early received and followed the advice of Sir Gilbert Elliot. I am afraid to have too often furnished the majority with arms against myself by observing a contrary rule. No part of your letter has given me so much pleasure as the information of his disposition towards me. It will have prepared him to receive with greater approbation the event of his son's return. I shall never forgive myself for having consented to it, if he is displeased with it; and yet I am sure that it was placing my friend Elliot in a point of view so conspicuous, that perhaps another opportunity might not have occurred in the course of his life to make his abilities equally known to the public, nor equally useful. But I will not entertain a doubt on the subject. It was a laudable measure; it will be received as such, and it will prove successful in every way." In a letter of 25th June 1776 (Gleig II, 68), Macleane writes that Elliot has been ill, and that he really believes chagrin at the little service he was able to do Hastings with Lord North had had some share in his illness. He goes on: "Sir Elijah Impey will expect a letter from me. Be good enough to assure him that I watch over his cause with the same unremitting *zeal* and *care* as over yours. Intentions were very hostile to him at first. He is, I am pretty certain, in no danger. *Magna est lex et prœvalebit.*"*

In connection with this the following letter of Impey should be read. It was written on 8th August 1775, and addressed, I believe, to Elliot. I found it among the Hastings' papers in the British Museum:—

"I am apprehensive that the majority of the Council will endeavour to assign undue motives for the execution.† There are two points I am much solicitous about; one that I may be defended from any imputation laid on me for acting from partiality or factiously. I would by no means have my friendship to Mr. Hastings be denied or extenuated. It was founded on friendship for schoolfellow, and has been confirmed by opinion of the man. The other, that the disputes which have been between the Council and the Court may be rightly understood. I wish my friends to be furnished with extracts of all consultations in which we are named or alluded to, from the 4th May till the present time, and that the

* Apparently Macleane could be sarcastic. The substitution of lex for *veritas* is significant.

† These words and the fact that the Judges employed Elliot to print the trial are sufficient to disprove Sir J. Stephen's audacious assertion (I, 230) that no one at the time showed the very least disapproval of the conduct of the Judges. Impey knew better than this. He said in his speech that the accusation was made in despatches and letters sent to England in 1775, and that the Judges heard of the calumny a year afterwards. On 20th January 1776, we find him writing a long letter of defence with reference to these despatches, he having received secret copies of the minutes of the Council from his friend Hastings. Impey bound himself by an oath not to divulge the minutes in Calcutta. Strange that Hastings when breaking his own oath should take one from another man. The phrase "legal murder" was attributed to Lord Mansfield in a letter written 1st December 1780, from Calcutta.

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letter which I sent back may not be forgot.* I shall think it unjust if, acting as I have done from conscientious motives, I should be recalled from a station to which I have sacrificed no very bad views in England. We miss you already." It was probably in answer to this letter that Elliot wrote from Khejiri a letter which Sir Richard Sutton read to the House of Commons.

MR. WARREN HASTINGS LAST DAYS IN ENGLAND.†

The prolonged administration of Hastings, his winning manners, and conversance with native languages, together with the imposing effect of the state by which he had, from motives of policy, thought fit to surround himself, made a deep impression on the minds of the Indian population. I have myself met with ballads, similar to those alluded to by Heber and Macaulay, which commemorate the swift steeds and richly-caparisoned elephants of "Sahib Hushting;" they likewise record his victory over Nundocomar who refused to do him homage. The Indian version of the story makes, however, no mention of the accusation of forgery, but resembles rather the scripture story of Haman and Mordecai, with a different ending. The Bengalees possibly never understood the real and lasting injury done them by Hastings, in fastening round their necks the chains of monopoly, despite the opposition of his colleagues, and contrary to the orders of the company. Once fully in operation, the profits of exclusive trade in salt and opium‡ became so large, that its renunciation could spring only from philanthropy of the purest kind, or policy of the broadest and most liberal character. With his countrymen in India, Warren Hastings was in general popular. It had been his unceasing effort to purchase golden opinions; and one of the leading accusations brought against him by the directors, was the wilful increase of governmental expenses by the creation of supernumerary offices to provide for adherents, or to encourage those already in place by augmented salaries. His own admissions prove, that attachment to his person, and unquestioning obedience to his commands, were the first requisites for subordinates; and the quiet perseverance with which he watched his opportunity of rewarding a service, or revenging a "personal hurt," is not the least remarkable feature in his character.

He quitted India in February 1785. Notwithstanding the unwarrantable measures adopted by him to raise the revenues and lessen the debts of the company, he failed to accomplish these objects, and, on the contrary, left them burdened with an additional debt of twelve-and-a-half million, and a revenue which (including the provision of an European investment) was not equal to the ordinary expenses of the combined settlements.§ Doubtless, great allowance must

* This refers to a letter of 16th June, addressed by the Board to Impey, and returned by him on the ground that it should have been addressed to all the Judges.

† Martin's Indian Empire Vol. I, p. 321.

‡ The 12th article of impeachment against Hastings set forth, "that he granted to Stephen Sulivan, son of Lawrence Sulivan, chairman of the Court of Directors, a contract for four years the provision of opium; that in order to pay for the opium so provided he borrowed large sums at an interest of eight per cent., at a time when he declared the drug could not be exported with profit; and yet he sent it to China, which was an act of additional criminality, *as he knew that the importation of opium was prohibited by the Chinese.*" Sulivan sold the contract to a Mr. Benn for £40,000; Benn to a Mr. Young for £60,000; and the latter reaped a large profit.—(Mill.)

§ A comparison of the receipts and disbursements of the year ending April, 1786, exhibited a deficit of about £1,300,000. The arrears of the army amounted to two millions; and "the troops at Madras and Bombay were in a state of utter

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be made for the heavy drain occasioned by the pressing wants of the Bombay and Madras presidencies, and decided commendation awarded for the energetic steps taken to avert the ruin in which the Mahratta war and the invasion of Hyder threatened to involve these possessions: but it is equally true, that the double-faced and grasping policy of the Governor-General tended to neutralise the benefit of his courage and decision, and, as in the case of Lord Pigot, fomented, instead of allaying, the evils of dissension and venality, which were more destructive to the interests of the E. I. Cy. than any external opposition.

Had Hastings resolved to abide by the conviction which led him on one occasion to exclaim, that he "wished it might be made felony to break a treaty," the consequences would have been most beneficial both to India and to England, and would, at the same time have saved him long years of humiliation and anxiety. He little thought that the Rohilla war, the sale of Allahabad and Oude, and the persecution of the Begums, would rise in judgment against him on his return to his native land,—bar his path to titles and offices of state, and compel him to sit down in the comparatively humble position which had formed the object of his boyish ambition, as master of Daylesford, the ancient estate of his family.

But Francis, now a member of parliament, had not been idle in publishing the evil deeds which he had witnessed without power to prevent; and Burke, whose hatred of oppression equalled his sympathy for suffering, brought forward the impeachment as a question which every philanthropist, everyone interested in the honour of England or the welfare of India, was bound to treat as of vital importance. Political motives, of an exceptionable character, on the part of the ministers, favoured the promoters of the trial; and after many tedious preliminaries, Warren Hastings appeared at the bar of the House of Lords, and knelt before the tribunal of his country, in presence of one of the most remarkable assemblages ever convened in the great hall of William Rufus. Of the brilliant aristocracies of rank, talent, wealth, and beauty, of which England then boasted few members were absent. The queen and princesses had come to witness the impeachment of a subject known to have enjoyed no ordinary share of royal favour, and to listen to the charges urged against him by the thrilling eloquence of Burke, the solid reasoning of Fox, and the exciting declamation of Sheridan. The trial commenced with a strong feeling on the part of the public against the accused; but it dragged on, like most state proceedings, until people ceased to care how it ended. At length, after seven years spent in law proceedings of a most tedious character, the wrongs inflicted in a distance clime, and at a distant period, became almost a matter of indifference: a sort of sympathy, such as is often felt for acknowledged criminals, took the place of lively indignation; and when the inquiry ended in the acquittal of Hastings, he was generally believed to have been sufficiently punished by the insuperable obstacles which his peculiar position had imposed to prevent his selection for any public office, and by the ruinous condition to which his finances had been reduced by the costly expenses, legitimate, and illegitimate, of the painful ordeal through which he had passed. The law charges alone exceeded £76,000. Probably still larger sums were expended in various kinds of secret service—"in bringing newspapers, rewarding pamphleteers, and circulating tracts;"* beside £12,000 spent in purchasing, and £48,000 in adorning, Daylesford: so that Hastings, when finally dismissed, turned from the bar of the House of Lords an absolute pauper—worse than that—an insolvent debtor. The company came to his relief with an annuity of £4,000 a-year, and a loan of £50,000, nearly half of which

destitution, and some of them in open mutiny." The ascertained Bengal debt alone was about four million sterling.

* Macaulay's *Essay on Hastings*, p. 100.

was converted into a gift; and they continued to aid him at intervals, in his ever-recurring difficulties, up to the period of his death, 1818, aged eighty-six.

IN THE MATTER OF AMEER KHAN.

HIGH COURT.—AUGUST 29, 1870.

(BEFORE THE HON'BLE JUSTICE NORMAN.)

JUDGMENT.

At the sitting of the High Court on Monday, the 29th instant, Mr. Justice Norman delivered the following Judgment:—

Mr. Anstey moved that a writ of *habeas corpus ad subjiciendum* should be issued by this Court addressed to Dr. Fawcus, the Superintendent of the Jail at Alipore, outside the limits of the local jurisdiction of the High Court, commanding him to bring before this Court the body of Ameer Khan, together with the cause of his detention.

The petition and affidavits in support of it showed that Ameer Khan, a Mussulman, a subject of Her Majesty, and an inhabitant of Colootollah, in the town of Calcutta, where he had resided and carried on business for many years, on the 10th of July, 1869, was arrested at his house in Calcutta, by Mr. Birch, the Assistant Commissioner of Police for the town of Calcutta, and Mr. Reilly, Deputy Inspector-General of the Bengal Police. No warrant for his arrest was produced or shewn to him, though he demanded it to see by what authority they acted. He was removed from his house in Calcutta to Howrah, and from thence sent to Gya, and lodged in the jail there. From Gya he was removed to the Alipore Jail, where he arrived in August, 1869. He has ever since been confined there, that is to say, for a period exceeding 14 months in all.

Ameer Khan says that he has never been furnished with a copy of, or allowed to inspect, any warrant under which he is detained; that he has never been furnished with any copy or statement of the charge on which he was arrested, or been informed of what he is accused, though be has repeatedly applied to be furnished with such information.

On the 3rd of August, this Court issued a Rule, calling on Dr. Fawcus to shew cause why the writ should not issue, and directed that notice should be given to the Advocate-General. Dr. Fawcus is admitted to be a British subject.

The Advocate-General, showing cause, produced affidavits on the part of the Government, which denied certain charges made on the part of the petitioner, that due attention had not been paid to his health and comfort while in prison, and shewed that the removal of the prisoner from Gya to Alipore had taken place at his own request.

The Advocate-General, in answer to a question by the Court, admitted that the arrest in Calcutta had taken place with the sanction of the Governor-General in Council.

An affidavit was also filed, setting out a warrant in the form given in Section 2 of Act III. of 1818, signed by E. C. Bayley, Esquire, Secretary to the Government of India, for the detention of Ameer Khan in the jail at Alipore. The warrant bears date the 7th of May, 1870.

The Advocate-General protested against this Court assuming any jurisdiction. He contended that the Act of the Governor-General in Council in causing the arrest was an Act of State; that the supposed wrong, if any, was not a matter

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cognizable by any Municipal Court, because the Governor General in Council, in causing the arrest, had acted under the terms of the Act, and without reference to Municipal law. He referred to a passage in the judgment of Sir Lawrence Peel, Chief Justice, in the case of the Maharanee of Lahore, [I Taylor, 433],—"The conduct of the Government in so dealing with State prisoners, is exempt from the jurisdiction of the Court, as well as of the Courts of the East India Company. For an oppressive use of this power which is not to be supposed probable, the remedy would be by application to a higher, though distant, authority." But Sir Lawrence Peel is merely speaking of the detention of a State prisoner, without charges made or evidence of guilty communicated. In the next paragraph, he says,—"It appears to us that this lady, who is not a *subject, who owes not even a temporary allegiance, who is brought into this country a prisoner of State during actual hostilities, and so remains, hostilities still raging*, can claim no right to this high prerogative Writ, *grantable, as of right, to a subject, for the vindication of that liberty which the English law gives to all residents where it prevails.*" The Advocate-General cited no case, except that of the Maharanee of Lahore, in support of his position. I know of no authority for extending the immunity from the control of Municipal law, which exists in regard to acts done by Governors in their political capacity as regards foreign states or in time of war;—instances of which may be found in the case, of *Elphinistone* vs. *Bedree Chund*, 1 Knapp. P. C., 316; and the *Secretary of State in* vs. *Kamachee Boye Sahaba* 7 Moo. Ind., Appeals, 476—to the case of a wrong alleged to have been done in time of peace to a subject of the Crown by any person or persons exercising the office of Governor.

Of such a case Lord Mansfield, in *Fabrigas* vs. *Mostyn* Cowper, 161, and 20 State Trials, 81, said the Governor may be tried in England. "If he has acted rightly, according to the authority with which he is invited, he must lay it before the Court by way of plea, and the Court will exercise their judgment, whether it is sufficient justification or not." He adds,—"I can conceive cases in time of war, in which a Governor would be justified, though he acted very arbitrarily, in which he would not be justified, in time of peace. Suppose, during a siege or upon an invasion of Minorca, the Governor should judge it proper to send an hundred of the inhabitants out of the island from motives of real and general expediency, or suppose, upon a general suspicion, he should take people up as spies upon proper circumstances laid before the Court, it would be very fit to see whether he had acted as the Governor of a garrison should according to the circumstances of the case." * * * "To lay down in an English Court of Justice that a Governor acting by virtue of Letters Patent, under the Great Seal, is accountable only to God and his own conscience; that he is absolutely despotic, and can affect His Majesty's subjects, both in their liberty and property, with impunity, is a doctrine that cannot be maintained."

The Advocate-General and Mr. Paul, in shewing cause against the rule, contended next that the High Court has no authority to issue a writ of *habeas corpus* in to the Mofussil.

The question is the more important at the present day, because, although until the year 1862 the Court of Queen's Bench at Westminister had power to issue writs of *habeas corpus* to all parts of Her Majesty's dominions, even to those parts in which there were independent legislatures, as was done in the case of *John Anderson*, 30 Law Journal, *Q.* B., 129, where a *habeas corpus* was issued to Canada, that power was qualified by the 25 Victoria, Chapter 20, which enacts that "no *habeas corpus* shall issue out of England by authority of any Judge or Court of Justice therein into any colony or foreign dominion of the Crown, where Her Majesty has a lawfully established Court or Courts of Justice, having authority to grant and issue the said writ,

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and to ensure the due execution thereof, throughout such colony or dominion."

If, therefore, the High Court has the jurisdiction which it is alleged to possess, and refuse to execute it, the party may be left without remedy.

By the 12th Section of the Charter Act, 24 and 25 Victoria, Chapter 104, it is enacted that, save as by the Letters Patent may be otherwise directed, and subject, and without prejudice, to the legislative powers in relation thereto of the Governor-General of India in Council, the High Court, to be established in each Presidency, shall have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency, abolished under this Act at the time of the abolition of such last-mentioned Courts.

If the argument that, under the new Charter, writs of *habeas corpus* will not run into the Mofussil, is well founded, it seems to me that it must go the length that no process whatever can be issued into the Mofussil, and that any one served with any process out of the limits of the original jurisdiction, may disobey the writs issued from this Court in Her Majesty's name. Neither the adoption of Act VIII. as a body of rules of practice by the High Court, under the 37th Section of the Charter, nor the service of the writ by an officer of a Mofussil Court, can give any jurisdiction to the Court, or validity or force to its process, which it does not derive from the Charter.

The answer seems to be that the true construction of the Charter is, that ordinary original civil jurisdiction, within certain limits, is conferred on the Court by the 11th Clause of the Charter, and all powers and authorities necessary to enable the Court to exercise that jurisdiction with effect, which had been possessed by the late Supreme Court, were preserved to the High Court by the 9th Section of the Charter Act. Were this otherwise, the provision in Clause 37 of the Charter of 1862, that the proceedings of the Court should be regulated by the Code of Civil Procedure, would have to be treated as repugnant to Clause 11 of that Charter.

I may observe, moreover, that the issuing of the high prerogative writ of *habeas corpus ad subjiciendum* is not a matter of *ordinary original civil* jurisdiction. In England, it issues on the Crown side of the Court of Queen's Bench, and in the late Supreme Court the motion for such *habeas corpus* was made in the Supreme Court, and not on any side, such as the Plea side or Equity side out of the Court. See Fulton's Reports, p. 372.

The limits within which such writs can be issued are, in my opinion, not affected by the 11th Clause of the Charter of 1865.

The answer to the question as to the local limits within which such *habeas corpus* may be issued, appears to me to depend on the jurisdiction which the late Supreme Court possessed under the Charter of 1774; and I propose to consider what was the position of the English in that which is now the Bengal Presidency, at the time when the Charter of 1774 was granted by His Majesty King George III. First, then, what was the law in force in Calcutta and applicable to British subjects resident in India in 1773, at the time of the passing of the 13 George III, c. 63. Writing in 1720, Mr. West, afterwards Lord Chancellor of Ireland, says,—"The Common Law of England is the Common Law of the plantations, and all statutes in affirmance of the Common Law passed in England antecedent to the settlement of a colony are in force in that colony, though no statutes made since those settlements are there in force, unless specially mentioned. Let an Englishman be where he will, he carries as much of law and liberty with him as the nature of things will bear." Lord Lyndhurst in *Freeman* vs. *Fairlie*,* 1 Moo. Ind. App., 342, says,—"Those persons who established themselves in India carried with them the English Law. It does not appear that the English Law was established there in the first instance by any pro-

* P. C. J. p. 123.

clamation or Charter, but it was probable that the English carried with them, and acted upon, the law of England, from the necessity of their situation; because the two systems of law which at that time existed there, the Mahommedan and the Hindoo Laws, were so blended with the particular religions of the two descriptions of persons, as to render it almost impossible for that law to have been adopted by the English settlers. This, however, is rather matter of speculation than material to the question—what, so far as British subjects are concerned, is the law now existing in the settlement? It appears by all the Charters applicable to the state of law, and by all the Acts of Parliament which refer to it, from the year 1601 down to the present time (and I refer particularly to the Charter of 1726), that the English law has been considered the law of the settlement. It has been recognised as such by the competent authority; and we are to consider, so far as British subjects are concerned, that the English law is not only now the law of Calcutta, but that it was so from the earliest period of that settlement."

The Mayor's Court was established in Calcutta by the Charter of 1726. The same Charter empowered the East India Company to appoint a General, or Generals, of all the forces by sea and land, of or belonging to the towns, limits, or factories of Calcutta, Madras, and Bombay, and enacted that it should be lawful for the General to assemble and exercise in arms the inhabitants of the town or factory for the defence of the factories, and upon just cause to invade and destroy the enemies of the same.

Surajah Dowlah attacked and took Calcutta on the 5th of August 1756.

In January, 1757, Calcutta was retaken by an English force, under the command of Clive and Watson. The Nabob's army was defeated by Clive. And in February of the same year, a treaty was entered into between Surajah Dowlah and the Company, by which it was agreed that the Company's settlements at Calcutta, Cossim Bazar, Dacca, and other places, should be restored to them; and that the Company should be allowed to fortify Calcutta in such manner as they should deem proper for their defence, and that a Mint should be established at Calcutta. Sir Elijah Impey says,—"The inhabitants of Calcutta inhabited a narrow direct, and that district an English town and settlement, not governed by their own laws, but by those of England, long since there established, when there were no Courts of Criminal Justice, but those of the King of England, which administered his laws to the intent, and in the form and manner in which they were established in England. The inhabitants resorted to the English flag, and enjoyed the protection of the English law; they chose those laws in preference to their own, and were hence accustomed to them. The town was part of the dominion of the Crown by unequivocal right, originally by cession found on compact afterwards by capture and conquest. Their submission was voluntary, and if they disliked the laws, they had only to cross a ditch, and were no longer subject to them. The state of an inhabitant of the provinces at large was that of a man inhabiting his own country, subject to its own laws. The state of a Hindoo, a native of the provinces inhabiting Calcutta, which in effect was an English town, to all intents and purposes, did not differ from that of any other foreigner; from whatsoever country he might have migrated, he partook of the protection of the laws, and in return owed them obedience." By treaty with Jaffer Ally Khan, the lands to the south of Calcutta, as far as Calpee, in the 24-Pergunnahs, were granted to the East India Company, the revenue to be paid to them in the same manner with other zemindaries. In 1763, in accordance with a previous treaty between Meer Mahomed Kassim Khan and the Company, Burdwan, Midnapore, and Chittagong, were assigned to the East India

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Company for defraying the expenses of their troops. After the battle of Buxar in 1764, the Emperor of Delhi granted Ghazeepore and Benares to the Company. In August, 1765, the East India Company entered into an alliance, offensive and defensive, with Soojabood Dowla, Nabob Vizier of Oudh, and by the treaty the parties stipulated that the Emperor should remain in full possession of Corah and Allahabad, which were ceded to His Majesty as a royal demesne for the support of his dignity and expenses. The sovereignty and possession of Benares, Jounpore, and Ghazeepore, &c., were given up by the Nabob to the East India Company in September, 1765. The Dewany of the Provinces of Bengal, Behar, and Orissa, was granted by the Emperor to the East India Company, to be held by them in perpetuity, the Company guaranteeing the payment of 26 lakhs of rupees yearly, the revenue of the province, which had formerly been paid by Nabob Nujjumood Dowlah, Bahadoor. Mr. Morley says,—"The firman which conferred in perpetuity the Dewany authority over the Provinces of Bengal, Behar, and Orissa on the East India Company, constituted them Masters and virtual Sovereigns of these provinces; the office of Dewan implying not merely the collection of revenue, but also the Administration of Civil Justice. By treaties with the Nabobs Nuzumood Dowla in 1765, Sijefood Dowla in 1766, and Moocburickood Dowla in 1772, the entire military defence of Bengal was placed under the management of the Company. By general regulations made by the President and Council in Bengal in 1772, in each District, two Courts of Judicature, the Mofussil Dewany Adawlut (Provincial Court of Dewany for the trial of Civil cases) and the Fouzdary Adawlut for the trial of all crimes and misdemeanors, were established, and Dewany Sudder Adawlut and Nizamut Sudder Adawlut were established at the chief seat of Government. In a letter, dated the 3rd of August, 1773, Mr. Warren Hastings, the President of the Council, writes,—"Although we profess to leave the King as the final Judge in all Criminal cases, and the Officers of this Court to proceed according to their own laws, forms, and opinions, independent of the control of the Government, yet many cases may occur in which an invariable observance of this rule may prove of dangerous consequence to the power by which the Government of this country is held, and to the peace and security of its inhabitants. Wherever such cases occur, the remedy can only be obtained from those in whom the Sovereign power exists. It is on them that the inhabitants depend for protection and for the redress of all grievances, and they have right to the accomplishment of this expectation, of which no treaties or casuistical distinctions can deprive them." He goes on to point out that the Company, as Dewan, have an interest in the welfare of the country and, "as the Governing power, have equally a right and obligation to maintain it."

These words shew that in 1773 the rights, powers, and duties of the East India Company, as the true Rulers of the country, were fully understood and acknowledged by the head of that Government in India. Then came the Statute 13 George III, Chapter 63. By the 6th Section, it was enacted that for the Government of the Presidency of Fort William in Bengal there should be appointed a Governor General and four Councillors, and that the whole Civil and Military Government of the said Presidency, and also the Ordinary Management and *Government of all the territorial acquisitions* and revenues of the Kingdoms of Bengal, Behar, and Orissa, should, so long as the same should remain in the possession of the Company, be vested in the Governor General and Council of the said Presidency of Fort William, as the same now are, or at any time heretofore might have been exercised by the President and Council, or Select Committee, as the case may be.

The 13th Section recites the Letters

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Patent of the 26th George II, establishing Courts of Civil, Criminal, and Ecclesiastical Jurisdiction at the Company's Settlements at Madras, Bombay, and Fort William in Bengal, and that the *Charter does not sufficiently provide for the Administration of Justice in such manner as the state and condition of the Company's Presidency of Fort William in Bengal, so long as the said Company shall continue in possession of the territorial acquisitions before mentioned, do and must require.* It proceeds to enact that it shall be lawful for His Majesty to establish Supreme Court, which said Supreme Court of Judicature shall have, and the same is declared to have, *all Civil, Criminal, Admiralty, and Ecclesiastical Jurisdiction*, and to form and establish such rules of practice, and such rules for the process of the Court, *and to do all such other things as shall be necessary for the administration of justice*, and the due execution of all, or any, of the powers which by the Charter shall be granted and committed to the Court, and also shall be at all times a Court of Record, and shall be a Court of Oyer and Terminer and Jail Delivery, in and for the said Town of Calcutta and Factory of Fort William in Bengal aforesaid, and the limits thereof, and the factories subordinate thereto. It is clear, on reading this provision, that the Court was to be a great Court of Judicature for the Presidency of Bengal, as well as a Court of Record and Oyer and Terminer for the Town of Calcutta.

By the 14th Section of the Act, and the 13th Clause of the Charter, the jurisdiction in Civil Cases is defined. It extends to all British subjects residing in the Provinces of Bengal, Behar, and Orissa, and persons employed in the service of the Company, or of any of his Majesty's subjects.

By the 19th Clause of the Charter, the jurisdiction in Criminal Cases is defined. It extends to the same classes of persons as those to which Clause 13 relates, and empowers the Sheriff to arrest the bodies of such offenders, and bring them to Fort William. Section 17 empowers the Supreme Court, in cases where there has been an agreement, that a matter should be determined in that Court, to issue, either before or after sentence, a writ or precept commanding either party suing in violation of that agreement in the Country Courts, to surcrease proceeding further in such suit.

The 6th Section of the Charter ordains that all writs, summonses, precepts, rules, orders, and other mandatory process, shall run in the name of the Crown, and be sealed with the seal of the Court. The 36th Section commands all Governors, Commanders, Magistrates, Officers, and Ministers, civil and military, &c., in the execution of the powers by the Charter created, to be aiding, assisting in, and obedient in all things to the Supreme Court. There are several Sections of the Charter which shew that it was intended that the process of the Court should go into the Mofussil, and might be addressed to natives. The 21 George III., Chapter 70, empowers the Supreme Court to frame such process, and make rules for the service thereof, in suits against the natives of Bengal Behar, and Orissa.

From the date of this Charter in 1774, if not from an earlier period, the native inhabitants of the Town of Calcutta were punishable by the English Criminal Law, for any crimes committed by them within the limits of the settlement. I may answer Mr. Paul's argument on that point in the words of Lord Brougham, in *Warrender* vs. *Warrender*, 9, Bligh's New Series, 129.—"The *lex loci* must needs govern all criminal jurisdiction from the nature of the thing and the purpose of that jurisdiction." In *Somerset* vs. *Stuart*, Lofft's Reports, p. 1, where the question was, whether a negro slave, who had been brought to England by his master, could be detained in slavery in England, Mr. Hargreave argued successfully, that from the submission of the negro to the laws of England, he was liable to all their penalties, and consequently had a right to their protection.

In *Campbell* vs. *Hall*, Cowper, 208, Lord

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Mansfield, delivering the unanimous opinion of the Court of King's Bench, said,—"The law and legislative Government of every dominion equally affects all persons and property within the limits thereof, and is the rule of decision for all questions which arise there. Whoever purchases, or lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the plantations (*meaning* thereby where English law has been introduced), has no privilege distinct from the natives." There were, therefore, at the time of the passing of the 13 George III., Chapter 63, not only a great number of Europeans in India, but there were, at the passing of that Act, a great number of native inhabitants of Calcutta, who could claim the benefits of English law, and the rights and privileges of Englishmen. The most precious of all rights which a British subject possesses, is the right of personal liberty, and if the Charter had contained no words providing any machinery by which that right could be vindicated, it could hardly have been said to provide for the due administration of justice, in such manner as the condition of the Company's Presidency at Fort William in Bengal required. The Advocate General argued that the *Habeas Corpus* Act 31 Car. II, cap. 2, was not part of the statute law introduced into India. His argument may be well founded as to certain parts of that statute, which apply specially, or by name, to the Superior Courts of Common Law at Westminister. But other parts, which are general in their terms apparently do apply to India, and if that is the case, it was an additional reason for putting such a construction on the Chartar of 1774 as would enable the Supreme Court to issue a writ which the law gives to the subject as a matter of right. I may observe that, generally speaking, in cases where a person is illegally deprived of his liberty, he has three remedies: first, by civil action; secondly, by indictment; and, thirdly, by the writ of *habeas corpus*. But as no action or criminal charge can be maintained in the Courts of this country against the Governor General for an illegal imprisonment, the only remedy for the wrong in such case is that afforded by the writ of *habeas corpus*. The right appears to be preserved as regards European British subjects committed by the Governor General in Council by the 3rd Section of the 21 George III., Chapter 70, which contains a provision that, with respect to such order or orders of the said Governor-General in Council as do or shall extend to any British (meaning European British) subject or subjects, the said Court shall have and retain as full and competent jurisdiction as if the Act had never been made." Therefore, as regards European British subjects, the right to demand a writ of *habeas corpus* from this Court would not be taken away by the Section. The legality of an order by the Governor General in Council for the arrest and deportation of a European British subject brought up by *habeas corpus*, came under the consideration of the Supreme Court, Sir R. Chambers, C. J., and Sir William Jones, in *Rex* vs. *Gordon*, East's notes, 2 Morley, p. 223.

I will now turn to the Charter. By the 4th Clause it was declared that the Chief Justice and Puisne Justices were "appointed to be Justices and Conservators of the Peace and Coroners, within and throughout the said provinces, districts, and countries of Bengal, Behar, and Orissa, and every part thereof; *and* to have such jurisdiction and authority as the Justices our Court of King's Bench have, and may lawfully exercise within that part of Great Britain called England by the Common Law thereof."

Blackstone, speaking of the writ of *habeas corpus ad subjiciendum*, says,—"This is a high prerogative writ, and therefore, by the Common Law, issues out of the King's Bench by a *fiat* from Chief Justice, or any other of the Judges, running into all parts of the King's dominions, for the King is at all times entitled to have an account why

the liberty of any of his subjects is restrained, wherever that restraint may be inflicted."

The words of the 4th Section of the Charter have been treated as giving power to the Court to issue writs of *habeas corpus* from the time when the Supreme Court was first established. This appears from the language of Sir Elijah Impey, C. J., in the case of *Rex* vs. *Warren Hastings* in 1775, Morton's Reports p. 206, and *Coza Zachariah Mahomed* in 1779, Morton, 263. That power was not questioned in the 21 George III, c. 70. Indeed the 3rd Section of that Act, which declares that the Supreme Court shall retain full jurisdiction with respect to orders made by the Governor General in Council, extending the British subjects, has apparently direct reference to writs of *habeas corpus*. Writs of *habeas corpus* have been issued in the Mofussil in 1794, when a witness on his way from the Supreme Court to his home was arrested. Rajah Mohendro Deb Roy's case Smoult, 148. In 1800, in the case of *Brijissary Seetwary* vs. *Ramnarain Mitter*, to a jailor of the 24-Pergunahs, to bring up a prisoner as a witness. In 1815, to bring up a woman, plaintiff in a suit, who had been carried off by force out of Calcutta, with a view to compel her to withdraw her suit.—East's Notes, 2 Morley, p. 29. In 1829-30, the jurisdiction to issue such writs into the Mofussil is treated as clear by Sir Charles Grey and Sir Edward Ryan, (See the 5th Appendix to the 3rd Report of the Select Committee of the House of Commons, pp. 1225 and 1281.) Writs of *habeas corpus*, to bring up witnesses from the Mofussil were issued by Sir Edward Ryan in 1839.—*Doe Dem: Buddinauth Ghosal* vs. *Deverell*, Morton, 184; by Sir Edward Ryan in 1840, to bring up a person who had been carried off from his house in Calcutta into the Mofussil, from the custody of a person not otherwise subject to the jurisdiction than in respect of the wrong committed by him in the abduction.—Morton's Reports, 226; In the time of Peel, Chief Justice, to bring up a witness from a Mofussil Jail.—The *Queen* vs. *Shaw*, Fulton, 328. In the case of the Maharanee of Lahore, Taylor's Reports, 433, Peel, Chief Justice says,—"Enough is not shown to lead to the inference that her imprisonment was illegal; she is not resident where the English Law is the general law as regards personal liberty. The English Law as to personal liberty does prevail in Calcutta as to all its inhabitants. Beyond the local limits of Calcutta the English Law on this subject is the personal law of a class, *viz.*, British subjects, which they carry with them. The Common Law of England, which gives the right to the writ, has been introduced into Calcutta with the general body of the English Law. Nothing but an act of the Legislature could here in Calcutta suspend its operation." The power of the late Supreme Court to issue writs of *habeas corpus* to persons in the Mofussil has been asserted from the time of the promulgation of the Charter to the present day, and is admitted in the case of the Justices of Bombay, 1 Knapp. I confess that it was not without surprise that I heard the Advocate-General challenge the jurisdiction. If the construction which has always hitherto been put on the 4th Clause of the Charter of 1774 is erroneous, it is at least no longer open to any Judge of this Court to say so. No Judge in this country could be justified in pronouncing a decision contrary to the long course of decisions and the interpretation which has hitherto been universally received. If the propriety of these decisions is to be questioned, it must be in a higher Court.

For myself, I have no hesitation in accepting those decisions as settling the law. Regulation III. of 1818, entitled a Regulation for the confinement of State prisoners, cites, amongst other things, that "reasons of State, embracing the due maintenance of the alliance formed by the British Government with foreign powers, the preservation of tranquillity in the territories of native Princes entitled to its protection, and the security

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of the British dominions from foreign hostility and from *internal commotion*, occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding, or where such proceeding may not be adapted to the nature of the case, or may for any other reasons be unadvisable or improper; and whereas it is fit that in any case of the nature herein referred to, the determination to be taken should proceed from the Governor-General in Council," and enacts that "when the reasons stated in the preamble of this Regulation may seem to the Governor-General in Council to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature, a warrant of commitment, under the authority of the Governor-General in Council, and under the hand of the Chief Secretary, or of one of the Secretaries to the Government, shall be issued to the officer in whose custody such person is to be placed."

Regulation III. of 1818 having been passed by a legislative authority, which had no power to bind European British subjects, it seems to me that it must be taken as applicable, and enacted with reference only to natives and others subject to the jurisdiction of the Provincial Courts. The Regulation appears to have been passed by the Vice-President in Council under the provisions of the 37 George III., Chapter 148, Section 8. It has been objected that it was not registered as required by 13 George III., Chapter 63, Section 36. But it appears to me that the legislative powers conferred by the 13 George III., Chapter 63, Section 36, are intended to apply only to what is there described as the Company's *Settlement at Fort William*, in other words, Calcutta and its dependent factories, where English Law had been introduced, and not to what are in that Act described *as the territorial acquisition of Bengal, Behar*, and *Orissa*.

Legislative powers for the Government of Bengal, Behar, and Orissa, were first conferred by the 21 G. III., C. 70, S. 23. Those powers were extended by the 37 G. III., C. 142, S. 8, which enacted that "all regulations which should be issued and passed by the Governor-General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives, or any other individuals who may be amenable to the provincial Courts of Justice, shall be registered in the judicial department, and formed into a regular Code, and that the grounds of each regulation shall be prefixed to it, and all the provincial Courts shall be, and they are hereby directed to regulate their decisions by such rules and ordinances as shall be contained in the said regulations."

The effect of Regulation III. of 1818 and Act XXXIV, of 1850, which enacts in substance, that State prisoners under Regulation III. of 1818 may be detained within the local jurisdiction of the Supreme Courts, &c., were considered by the late Supreme Court in Tucket Roy's case, 1 Boulnois, 355. In that case it was decided that a native of Oudh, a mohurrir in the employment of the Queen of Oudh, who had been arrested at Garden Reach, outside the local limits of the town of Calcutta, under a warrant issued by the Governor-General in Council under Regulation III. of 1818, was fully detained, and could not be discharged upon *habeas corpus*.

Mr. Newmarch argued, as Mr. Anstey has done, in the case now before me, that the Act of 1850 was contrary to Magna Carta; that is affected the unwritten law, whereon might depend the allegiance of the subject.

The Common Law, the unwritten law and constitution of England, has never been introduced into the Mofussil. The Provinces of Bengal, Behar, and Orissa, were countries which, at the time when they came into the possession of the English Government, had laws of their own, for the administration of which provision was made. When the East India Company took upon itself the office

of Dewan, the 21 G. III., c. 70, s. 23, and the 37 G. III., c. 142 s. 8, made provision for the introduction of such changes in the ancient laws of the country as the Governor-General in Council might from time to time think fit to make; express provisions against the introduction of English Law were made by Regulation III. of 1793. See the preamble and Section 31; Regulation IV. of 1793, S. 15; and Regulation VII. of 1832, S. 9. Down to the time of the introduction of the Penal Code, the Mahomedan criminal law, modified by different Regulations, made by the Governor-General in Council under the powers of the 21 G. III., C. 170, S. 23, and 37 G. III., C. 142, S. 8, continued to be the law by which all offences triable before the Mofussil Courts were punishable.

By the 37 G. III., C. 142 S. 8, Parliament conferred on the Governor-General in Council a power of legislation concerning the rights, persons, and properties of the natives amenable to the provincial Courts without restriction or limitation of any kind. The Regulation III. of 1818 is one which falls within that class of laws which authorizes the infliction of penalties, the privation of liberty, even the destruction of life, with a view to the future prevention of crime, and insuring the safety and well-being of the public. It falls within the principle *salus populi suprema lex*. It is useless to urge that the Regulation makes no provision against the possibility that the party may be confined on charges which may be false and malicious, and which he has no opportunity of answering. With all its defects, if defects they be, it was passed by a legislative authority having full power to enact it as it stands. It does no more than give to the Governor-General in Council a power analogous to that which the parliament of the United Kingdom exercises, when by a legislative enactment it suspends the Habeas Corpus Act. There is nothing in the 3 and 4 W. IV., C. 85, S. 43, which could make it questionable whether the Governor-General in Council had power to enact that a prisoner confined under a law already in force might be detained within the presidency town.

But a very different question arises under Act III. of 1858, a question *not* decided, or even touched, by the decision in Tuckut Roy's case. The Act recites that it is expedient that the powers of Regulation III. of 1818 of the Bengal Code be extended, and enacts that the provisions of Regulation III. of 1818 of the Bengal Code, relating to the arrest and confinement of persons as State prisoners, shall be in force within the local limits of the jurisdiction of the Supreme Court of Judicature at Calcutta. There is apparently no exception or restriction whatever. It applies to all persons within the local limits, whether European British subjects, or persons living within the local limits under the protection of, and subject to, English Law. Act III. of 1858 was passed by a legislature which derived its power from the 3 and 4 William IV, Chapter 85, sec. 43, which contains a proviso "that the Governor General in Council shall not have *the power of making any laws or regulations, which shall in any way affect any prerogatives of the Crown, or the authority of the Parliament, or the institutions or rights of the said Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom*, or the sovereignty or dominion of the said Crown over any part of the said of the said territories."

In order to see what is meant by the words, "unwritten laws or constitutions whereon may depend in any degree the allegiance of any person," it is necessary to consider, first, what allegiance is. It is the true and faithful obedience of the subject to the sovereign. Every one born within the dominions of the king of England, whether in England or in the Colonies or dependencies, being under the protection, therefore, according to our common law, owes allegiance to the king. Every British subject is born a

debtor by the fealty and allegiance which he owes his sovereign and the State, a creditor by the benefit and protection of the king, the laws and the constitution. Allegiance, says Sir William Blackstone, is the tie which binds the subject to the king in return for that protection which the king affords to the subject. Foremost amongst the privileges assured to the subject by the protection of the sovereign is liberty and security of the person.

The Crown cannot derogate from these rights. Bracton tells us that the king is under the law, for the law makes the king. The king cannot interfere with the liberty of the subject, nor deprive him of any of his rights. How absolute soever the sovereigns of other nations may be, the king of England cannot take up or detain the meanest subject at his mere will and pleasure. I will proceed to consider what are the unwritten laws and constitution of the United Kingdom, which are alluded to in the Section before me. It is well known that the provisions of the Great Charter and the Petition of Right are for the most part declarations of what the existing law was, not enactments of any new law. They set forth and assert the right of the subject, according to what was assumed to be the ancient unwritten law and constitution of the realm. The Great Charter itself was confirmed by upwards of thirty different statutes prior to the time of King Henry VI. One of these Acts, the 28 Edward III, Chap. 3, declared that "no man, of what state or condition he be, can be taken or imprisoned without being brought to answer by due process of law." The petition of Right was addressed to King Charles I by the lords spiritual and temporal, telling him that, "against the tenor of the said statutes, divers of your subjects have of late been imprisoned without cause shown, and when for their deliverance they were brought before your justices by your Majesty's writ of *habeas corpus*, there to undergo and receive as the Court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the Lords of your Privy Council, and yet were returned back to their several prisons, without being charged with anything of which they might answer in due course of law." Praying, "as their rights and liberties according to the law and statutes of the realm," that his Majesty would "vouchsafe to declare that the proceedings to the prejudice of the people should not be drawn into consequence or example, and that His Majesty would declare his royal will and pleasure, that in the things aforesaid, his officers should serve him according to the law, and statutes of the realm." There are also the Act for the abolition of the Star Chamber, 16 Car, I, Chap. 10, and the Habeas Corpus Act 31 Car. II., Chap. 2. Now if it be true, as laid down in Calvin's case, 7 Coke's Report, p. 1., that *protectio trahit subjectionem et subjectio protectionem*, that allegiance and protection are reciprocally *due* from the subject and the sovereign, it is evident that the strict observance of the laws which provide for such liberty and security ensures the faithful and loving allegiance of subjects. The infraction of such laws may be carried to such an extent as to give rise to the right of self-defence on the part of the subject, a right which, says, Sir Michael Foster, the law of nature giveth, and no law of society hath taken away.

No man can study the history of England, or can read the great judgment passed by the High Court of Parliament by the Bill of Rights on King James II., without seeing that on the faithful observance by the sovereign of the unwritten laws and constitution of the United Kingdom, as contained in the Great Charter and other Acts which I have mentioned, depend in no small degree the allegiance of the subjects.

It would be a startling thing to find that rights of so sacred a character could be taken away by an act of the subordinate legislature. It would be strange

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indeed if a great popular assembly like the Parliament of England had put into the power of a legislature, which has not, and in the nature of things could not have, any representative character, the power of abrogating or tampering with such fundamental laws. I think that the 43rd Section of the 3 and IV., W. 4 Cap. 85, shows clearly that the imperial legislature has not forgotten the rights of the people.

It is convenient that I should turn for a moment to the history of this piece of legislation.

The 13 George III., Chap. 63, Section 36, empowered the Governor and Council to make rules, ordinances, and regulations for the Civil Government of the Settlement of Fort William, *not being repugnant to the laws of the realm.* It was found difficult to give any precise interpretation to these words.

These laws were to be registered and published in the Supreme Court, with the *consent and approbation of that Court.* The Judges claimed a right to hear the inhabitants of Calcutta by their counsel against the registry of regulations made by the Governor-General in Council.

This led to great inconveniences. A minute by Sir Charles Grey, 5th Appendix to the 3rd Report of the Select Committee of the house of Commons, 1833, pp. 1129, shows that it was felt that the due consistency of Indian Law with the law of the United Kingdom ought to be secured by specific limitations of the subordinate legislative power. It was suggested (p. 1127) that in view of possible incongruities between the ordinances of a subordinate legislature and the *primary laws* of the United Kingdom, the Judges, or English lawyers appointed by the Crown, might have a power of veto (p. 1131) or of suspending a regulation, until the authorities in England could be consulted, in cases in which any primary law of the United Kingdom should appear to be violated.

The Governor-General in Council, Lord William Bentinck, in a letter to the Judges of the Supreme Court, dated the 20th of October, 1829, writes:—"We fully concur with you that, besides reserving a veto to the Governor-General, the restriction contained in the 33 G. III., Cap. 52, S. 51, should also, of course, be maintained. It will be entirely proper that the Judges of the Supreme Court, or a majority of them, should have the power of suspending the enforcement of any act of the Legislative Council which they may consider to be illegal." The minutes of the Judges and correspondence of the Governor-General resulted in the preparation of heads of a bill to be entitled "An Act for establishing a Legislative Council in the East Indies." The suspending power, as proposed, appears in the 6th Section of this draft, and in the 8th, the phrase we have now to construe, which is repealed in the 24 and 25 Vict., Cap. 67, Section 22, for the first time makes its appearance.

If I am right in my construction, the several provisions will be found in what I conceive to be their due order. There are provisions for the protection of the rights—first, of the Crown; secondly, of the Parliament; thirdly, of the East India Company; fourthly, of the People.

It should be observed that the proviso is not that no law shall be made contrary to the Magna Carta, or any other similar statute. Had that been the case, probably it would not have been competent to the Indian legislature to pass any enactment in the nature of a suspension of the Habeas Corpus Act.

But the unwritten law or constitution of England is of more flexible character. It would admit of a relaxation of the rules securing private rights in times of public distress or danger, *ne quid detrimenti capiat respublica.* An act for the suspension of the Habeas Corpus Act in such times is no violation of the constitution.

The question then comes—Does Regulation III. of 1818 fall within the principal above stated. The Advocate-General shewed that before answering that question, it is necessary to consider the peculiar circumstances of the coun-

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try. Mr. Ingram pointed out that at the time of the making of Regulation III. of 1818, there were in the country numerous and powerful feudatories of the sovereigns of recently conquered and ceded provinces, nominally subjects of His Majesty, but from whom danger might at any time be apprehended. I may observe that at the time of the passing of Act III. of 1858, the recent mutiny showed that there were in the ranks of the population fanatics, whose conspiracies, or preachings, might, if they were allowed to continue them without interference, cause great danger to the peace of the community at large. It is clear that if such persons were allowed in the presidency town a license and immunity which they did not enjoy in other parts of Her Majesty's Indian Empire, they would resort to Calcutta, and thus the capital of the Empire would become a hot-bed of conspiracies, the refuge and chosen home of traitors, fanatics, and conspirators.

The Regulation differs from Acts passed for the suspension of Habeas Corpus Act in this—that it is not a temporary Act; but if the danger to be apprehended from the conspiracies of people of such a character as those I have mentioned is not temporary, but from the condition of the country must be permanent, it seems to me that the principles which justify the temporary suspension of the Habeas Corpus Acts in England justify the Indian Legislature in entrusting to the Governor-General in Council an exceptional power of placing individuals under personal restraint when, for the security of the British dominions from foreign hostility, and from internal commotion, such a course might appear necessary to the Governor-General in Council.

I am, therefore, of opinion that, in enacting Act III, of 1858, the Indian Legislature did not exceed its powers.

The questions raised are of so much importance, and I have felt so much difficulty in arriving at a conclusion satisfactory to myself, that I might have been inclined to issue the writ of *habeas corpus* in order that the points to which I have adverted in this judgment should be more fully discussed upon the return.

But then comes the question, assuming that I have a general power to issue writs of *habeas corpus ad suhjiciendum* to the officers of Mofussil jails, should I be justified in issuing such a writ in the present case?

If the only obstacle was a difficulty in enforcing the writ, I should feel bound to follow the example of the Court of Queen's Bench in Anderson's case, 30 L. J. Q. B., 129, and to issue the writ without reference to the question whether the Court would be in a position to enforce obedience to it. But it is necessary to remember that by the 21 G. III., Cap. 70, Section 1, it is enacted that the Governor-General and Council of Bengal shall not be subject jointly or severally to the jurisdiction of the Supreme Court for, or by reason of, any Act or order, or any other matter or thing counselled or ordered or done by them in their public capacity only. And Section 2 goes on to enact that "For any acts done by the order of the Governor-General in writing * * * the said order with proof that the act or acts done, has or have been done according to the purport of the same shall amount to a sufficient justification of the said acts," and "the defendant shall be fully justified, acquitted, and discharged from all and every writ, action, and process whatsoever, civil or criminal, in the said Court."

Therefore, as the Superintendent of the Jail at Alipore holds the prisoner under the warrant in writing of the Governor-General in Council, it is clear that such order must prevail as against the command of any writ which this Court has the power to issue. It appears to me, therefore, that I ought not to issue a writ which it would be the duty of the Superintendent of the Jail to disobey.

The distinction between Anderson's case and that now before me is that, in the present case, the order of the Governor-General in Council, which this

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Court has no power to set aside or disregard, warrants the detainer. In Anderson's case the difficulty was only in enforcing obedience to the writ. If the prisoner in obedience to that writ was brought before the Court, it had an undoubted authority to discharge him.

For the reasons given above, I am of opinion that no writ of *habeas corpus*, to bring up the body of Ameer Khan, ought to issue. And the rule will, therefore, be discharged.

THE TRIAL OF MULHAR RAO GAEKWAR OF BARODA.

RESOLUTION BY THE GOVERNMENT OF INDIA.

Extract from the Proceedings of the Government of India in the Foreign Department (Political),—dated Simla, the 21st April 1875.

Read the undermentioned papers:—

Resolution No. 1106P., dated 21st April, and the documents thereto appended.

RESOLUTION.—His Highness Mulhar Rao Gaekwar, was suspended from the exercise of power, and the administration of the Baroda State was temporarily assumed by the British Government, in order that a public enquiry might be made into the truth of the imputation that His Highness had instigated an attempt to poison Colonel R. Phayre, C. B., the late Representative of the British Government at the Court of Baroda, and that every opportunity should be given to His Highness of freeing himself from the said imputation.

Sir R. Couch, Chief Justice of Bengal, the Maharaja of Gwalior, the Maharaja of Jeypore, Colonel Sir R. Meade, Chief Commissioner of Mysore and Coorg, Raja Sir Dinkur Rao, and Mr. P. S. Melvill, of the Bengal Civil Service, were appointed Commissioners for the purpose of enquiring into the said imputation, and of reporting to the Viceroy and Governor-General in Council how far the same was true to the best of their judgment and belief.

The Government of India desire to convey to the Chief Justice and the Members of the Commission their thanks for having accepted this onerous and responsible duty.

The reports of the Commissioners, who are divided in opinion, are now published for general information, together with the conclusions at which the Government of India have arrived after a full and deliberate consideration of the evidence, the arguments of counsel, and the opinions which the Commissioners have expressed.

ORDER.—Ordered, that the foregoing Resolution and the documents therein

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referred to be transmitted to Her Majesty's Secretary of State for India in Council, and that they also be published in the *Gazette of India*.

By order of His Excellency the Viceroy and Governor-General in Council.

C. U. AITCHISON,
Secy. to Govt. of India.

RESOLUTION.

Read the following papers*:—

1. Proclamation, dated 13th January 1875, suspending His Highness Mulhar Rao Gaekwar in order to enquire into the imputation that he instigated an attempt to poison the British Resident at Baroda.
2. Notification, dated 15th February 1875, appointing a Commission to enquire into the imputation.
3. Official notes of evidence and exhibits in the case (the vernacular document, being translated.)
4. Printed notes of the arguments of Counsel.
5. Joint Report, dated 31st March 1875, and signed by Sir R. Couch Sir R. Meade, and Mr. P. S. Melvill.
6. Separate opinion by Maharaja Scindia, dated 27th March 1875.
7. Separate opinion by the Maharaja of Jeypore, dated 27th March 1875.
8. Separate opinion by Raja Dinkur Rao, dated 26th March 1875.

1. The documents which are abovementioned as read, and which are also appended to this Resolution, show the steps taken in the enquiry relative to the conduct of His Highness Mulhar Rao, Gaekwar of Baroda, and it will not be necessary here to refer to the particulars shown therein, except for the purpose of elucidating the conclusion about to be expressed. The princes and gentlemen who have served on the Commission of Enquiry have completed their laborious task by submitting their several opinions on the case. It now remains for the Government of India to express the conclusions at which they have arrived after full consideration of the evidence, the arguments of counsel, and the various opinions entertained by the Commissioners.

2. Sir Richard Couch, Sir Richard Meade, and Mr. Melvill are all agreed that the Gaekwar is guilty of the offences imputed to him. To repeat here the most heinous and comprehensive of those imputations, they find "that an attempt to poison Colonel Phayre was made by persons instigated thereto by Mulhar Rao Gaekwar."

3. The Maharaja Scindia appears to assume that the existence of communications between the Gaekwar and the servants of the Residency, and also that the actual administration of poison to Colonel Phayre, are proved, though he does not expressly state those conclusions. But of the communications with servants he says:—"As regards the communication with servants night or day, this is no matter of importance. These visits and requests for presents on marriage and other festive occasions and the means to secure the favour of the Resident, as well as the procuring of information regarding each other, are matters in accordance with the practice of other Native Princes and persons who have connection with the Residency." And he thinks that the connection of the Gaekwar with the act of poisoning is not proved. His conclusion is thus stated: "As to the attempt at poisoning, from the whole case as it came before me, as far as my judgment and belief go, I am not convinced that the charge is proved against Mulhar Rao."

4. The Maharaja of Jeypore thinks that it is proved that the Gaekwar gave sums of money to the Residency servants, and also that poison was administered to Colonel Phayre. Of the communications with servants he speaks thus: "The statements made by Amina, ayah, and several other Residency servants establish the fact that sums of money had actually been given to the ayah and to other servants of the Residency at different times, by order of His Highness the Gaekwar. These sums

* NOTE.—Nos. 1 and 2 have already been published in the *Gazette of India* of the 16th January and 20th February 1875 respectively; Nos. 3 and 4, being bulky, will be published hereafter.

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of money, however, do not appear to have been given out of any motives to tamper with the Residency servants for improper purposes, but simply as presents from the Gaekwar, and such as are generally given on occasions of marriage and national festivals." His Highness then proceeds to dwell upon various defects in the evidence, which will presently be noticed more at length, and concludes thus: "For reasons stated above, I cannot persuade myself to believe that the Gaekwar was in any way implicated in the charge, notwithstanding the fact of poison having been found in Colonel Phayre's tumbler of sherbet, and the uncorroborated evidence of the three accomplices, Raoji, Nursoo, and Damodhur Punt."

5. The opinion of Raja Sir Dinkur Roa is almost identical with that of the Maharajah Scindia, and need not be stated more in detail here.

6. No one of the Commissioners suggests that the poison could have been administered by any other person than the Residency servant Raoji, aided by his superior, Nursoo.

7. If the matter were simply left to stand upon the opinions given by the Commissioners, it would follow that the Gaekwar, having had the opportunity afforded him to clear himself from the imputations made against him, has not cleared himself. Three out of the six Commissioners who have entered upon the enquiry are of opinion that he is proved to be guilty. Now, when three gentlemen, of great experience in the ways of this country and in weighing and drawing inferences from evidence, unite in an opinion condemnatory of a person into whose actions it has been their duty to enquire, and that opinion is not set aside by superior authority, it is impossible to say but that there must rest at least a grave suspension on the person so condemned.

8. But the Government of India do not think it right to leave the matter as it stands on the reports of the Commissioners. The Commission was not a judicial tribunal, but was appointed for the purpose of informing the mind of the Government of India by enquiry and report. Even had the Commissioners been unanimous, the Government of India would have thought it their duty to examine the matter for themselves, to form and pronounce an opinion. As the Commissioners are at variance with one another, it is due to them, and to all parties concerned in the matter, that the Government of India should not only express their conclusions, but should also state the principal considerations which have led them to form those conclusions.

9. The opinions of the three Commissioners, who have signed separate reports, the tenor of which has been stated, are founded partly on points of conduct or general improbabilities affecting the evidence given by the witnesses against the Gaekwar, and partly on special points of inconsistency or infirmity in the evidence itself. The Government of India will take the former class of considerations first. They propose to notice the main points of dispute, but not to give here a detailed narration of the body of the evidence, for which reference must be made to the documents contained in the Appendix.

10 In the first place, then, it is to be observed that the intercourse which is proved to have taken place between the Gaekwar and the Residency servants was personal intercourse, carried on by night and in a secret way, and was accompanied by considerable gift of money. This is proved by a number of independent witnesses, who speak directly to the facts, whose evidence is quite consistent upon the main points was unshaken by cross-examination, and when it could be tested by reference to external facts, such as the character of the building to which they were taken, the recollections of the persons who took them there, and the recollections of the persons who were privy to the payment of money, was found to answer to the test. There is no counter evidence on those points. Indeed, the Gaekwar himself does not deny the facts. He

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has put in a carefully-worded statement in which he says not that he did not hold personal intercourse with, or that he did not cause money to be paid to, the Residency servant, but only that he did not do so for the purpose of getting information.

11. Neither is there any counter-evidence, nor, so far as the Government of India observe, any suggestion, to displace the assertion of Raoji that his band administered the poison which was administered to Colonel Phayre, or that of Nursoo that he aided Raoji in that matter.

12. It appears then to the Government of India that the evidence establishes beyond the possibility of contradiction two cardinal points: first, that the Gaekwar was in personal secret communication carried on by night with five servants employed at the Residency, and that he gave money to Raoji, Nursoo, and Amina, three of those servants: and secondly, that a serious attempt was made to administer a fatal dose of poison to Colonel Phayre by the agency of two of those servants, *viz.*, Raoji and Nursoo. And they do not collect that any of the three Commissioners who have signed separate reports, means to dissent from either of these two propositions though their assent has not been expressed in so many terms.

13. Now, the proof of these two points carries the case a very long way. The great difficulty at the outset was the antecedent improbability that such a personage as the Gaekwar of Baroda should carry on frequent secret personal intercourse by night with a number of the Residency servants. When it becomes clear that he did so, the only question is whether such intercourse is wholly disconnected with the acts which those servants did, or whether the acts were the designed outcome of the intercourse. And on this question the antecedent improbability is all the other way. No motive whatever has been assigned for the action of Raoji and Nursoo, except the motive of earning reward from the Gaekwar. And it is much more probable that the two series of proved phenomena, which have been mentioned, should be connected as cause and effect, than that they should be wholly independent of one another.

14. It is indeed true that the three Commissioners who have signed separate reports treat the Gaekwar's intercourse with the Residency servants in a very light manner. Their opinions have been set forth above in paragraphs 3 and 4. But whatever the custom may be at other Native Courts, the Government of India think that due consideration of the facts which actually appear in evidence against the Gaekwar.

15. There is no evidence of any general distribution by the Gaekwar of gifts among the Residency servants on marriage or other festive occasions, such as, if made in moderation, might be of an innocent character. The evidence shows that gifts were made only to certain servants with whom the Gaekwar sought personal intercourse, and that those gifts were, relatively to the position of the servants, of very large amount. For example, a single gift to Raoji amounted to about four times his annual pay. The evidence, therefore, points not to a mere desire on the part of the Gaekwar to gain the general good-will and good offices of the Residency servants, but to an intention on his part to bribe some of them to the performance of important services.

16. Moreover, it is observable that the Gaekwar himself seems anxious to disconnect himself from the very practice which the passage quoted from the report of the Maharajah Scindia ascribes to him, while excusing it on the ground of its frequency, *viz.*, payment of money in order to procure information. In his written statement the Gaekwar speaks as follows:—

"I declare that I never personally directed any of the Residency servants to act as spies on the Resident, or report to me what was going on at the Residency, nor did I ever offer or cause to be paid any money to them for such purposes.

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"I say nothing as to the presents that may perhaps have been made to servants of the Residency on festive occasions, such as marriage and the like. Information on trifling matters going on both at the Residency or at my Palace may have been mutually communicated, but I did not personally hold any intercourse with those servants for this purpose; nor am I personally cognizant of any payments for the same having been made; nor did I authorize any measures by which secrets of the Residency should be conveyed to me."

17. There is yet further evidence that the payments made to the Residency servants were transactions not calculated to bear the light. No entries of such payments were found in the Gaekwar's private accounts. On the other hand there are a number of entries, ranging in time from the 24th November 1873 to the 13th October 1874, showing payments of large sums of money to Salim and Yeshwunt Rao. The payments purport to be for goods supplied by those persons, but in point of fact the entries are false, and no such goods were supplied. Now Salim and Yeshwunt Rao are the two confidential agents of the Gaekwar, by whose hands all the payments to the Residency servants were made. Here, then, are funds from which payments could be made for any species of secret service. The Gaekwar's Private Secretary, Damodhur Punt, says that the Residency servants were paid by means of funds. He is no doubt a most justly suspected witness, but in this instance he is only stating the natural inference to be drawn from the document and circumstances and he is not contradicted, as he might most easily have been had he spoken falsely.

18. The question now to be asked is whether the other evidence shows any connection, and if any, what connection, between the two cardinal points already established,—on the one hand, the fact that the Gaekwar was in secret communication with some of the Residency servants and paid money to them; and on the other hand, the fact that two of those servants, *viz.*, Raoji and Nursoo, were the actual agents in administering poison to Colonel Phayre. There is undoubtedly evidence to this effect, of the most conclusive nature, if only it is to be believed. The great body of it is supplied by Raoji and Nursoo themselves, and if they have not woven the most elaborate and marvellous tissue of falsehoods, they make it clear that the proceedings of the Gaekwar, which began by bribing the servants to give secret information and to exercise influence in his favour, ended in direct machinations against Colonel Phayre's person.

19. Is there, then, any sufficient ground for disbelieving what these witnesses say? It is said that, whoever committed the crime, they are accomplices in it, and that by their own showing they are very wicked men, who have not scrupled to attempt the life of a kind master and to aid in throwing the blame on an innocent fellow-servant. That is quite true, and it must excite the greatest suspicion of their evidence and instil the greatest caution into the minds of those who examine it. At the same time, it must be remembered that direct evidence of nefarious plots is not often procured except from accomplices; and that to reject such evidence merely on account of the source from whence it comes, would be contrary to common sense and to universal practice, and would frequently prevent the discovery of truth. What is necessary in such cases is to apply to the evidence given such tests as are usually employed as the touch-stones of truth, and to require the evidence to withstand the tests much more severely and rigidly than if it had come from an unsuspected source.

20. Throughout this case it is constantly to be borne in mind that there are proved facts which require explanation. If we find secret intrigue at one end, and action at the other end, of a series of transactions by the same persons, the presumption is that the two are connected, and their coincidence ought to be explained in some way.

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The Government of India then ask the following questions:—

(*a*).—Is the explanation given by the witnesses credible in itself?

(*b*).—Are the stories they tell consistent with themselves?

(*c*).—Are those stories consistent with one another in essentials?

(*d*).—When they mention external circumstances with which they can be confronted, are the stories essentially consistent with those circumstances? And are they essentially consistent with evidence given by independent witnesses?

(*e*).—Have the witnesses any interest in telling the story they have told?

(*f*).—Is any probability shown that they have colluded with one another?

(*g*).—Is any probabilities shown that they have been tutored by some common authority?

(*h*).—Was their demeanor under examination such as to induce a belief in their truthfulness, or the contrary?

(*i*).—Has their evidence been boldly and confidently met by the party it implicates?

21(*a*). There is nothing impossible or incredible in the stories told by these two witnesses; nor indeed, when the two cardinal points above mentioned have been once established, is any particular related by them so improbable but that a reasonable amount of evidence may establish it. It may be asked why the Gaekwar, having secured the services of Raoji, should also seek to employ Nursoo, and thus bring in an additional accomplice and an additional danger. It is often difficult to say why, in preparing a plot, a particular course has been taken instead of some other course which on review seems a more prudent one. But in this case an answer can readily be given. Raoji lived at the Camp. Nursoo was in the City.

The latter, therefore, was a more convenient means of communication with the Palace. But what is more important is, that Nursoo was Raoji's superior officer, and was usually in attendance in Colonel Phayre's verandah. It is clear, therefore, that Raoji would have run very serious risk of failure or detection if the jemadar Nursoo were not first secured.

22(*b*). The Government of India have failed to discover any material inconsistency in these stories as compared with themselves. A considerable period of time elapsed between the earliest statements of the witnesses and their latest. They were subjected to rigid cross-examination by a counsel of the greatest skill. And yet they have not contradicted their first evidence on any essential point. They are uncertain as to dates, but every person who has to deal with the natives of this country, at all events the uneducated ones, knows how hopeless it is to expect accuracy in such matters from them, and what a complete denial of justice there would be throughout the land if testimony was considered incredible on account of such inaccuracies. Raoji shows that he was vacillating in conduct, but that is not at all inconsistent with what we know of men working themselves up to commit wicked actions. There are also portions of his story which are obscure, as, for instance, the episode of the bottle, which he says he obtained from the Gaekwar, but which he did not mention in his first statement. But the substance of the story originally told by each witness remains intact. The secret interviews, the persons who were present at them, the receipt of money, the requests made by the Gaekwar to poison Colonel Phayre, the conveyance of the poison from the Gaekwar to Raoji, the deposit of it in Colonel Phayre's sherbet on the 9th November—all these things stand as they did in the first instance. Nor do the Government of India observe that the three Commissioners who have signed separate reports mention any contradiction of these two witnesses by themselves.

23(*c*). Equally certain is it that in the essential points the stories of the two witnesses are consistent with each other. They differ in particulars; but if they did not, they would justly be suspected of collusion. They differ as

to dates, a point which has been before remarked on; they differ as to the number of visits paid by them to the Gaekwar; they differ in many expressions; and they differ when one purports to state something that happened to, or was done by, the other, and to which the narrator was no immediate party. The Government of India entirely agree with the opinions expressed by the three Commissioners in paragraphs 34 and 42 of their joint report, respecting the discrepancies between Raoji and Nursoo, and they think that, so far from showing that the stories are false, those discrepancies serve to show the absence of collusion between the witnesses or of tutoring by the police.

24(*d*). Again, the Government of India find an amount of consistency between these stories on the one hand and external circumstances and evidence on the other, which would be unlikely if the stories were not true. The witnesses are correct about the character of the building and room which they say they were taken; the asserted payment of Rupees 500 to Raoji is proved to have actually taken place; the evidence of his companions, Jugga and Karbhai, corresponds with his statements about his visits to the Palace; the evidence of Jugga and the letter produced tallies with the assertion that information was actually sent by Raoji and Nursoo to the Palace: the evidence of Jugga and Dalput corresponds with the circumstances mentioned by Raoji as attending the payment of the Rupees 500; the lavish expenditure of Raoji is consistent with his having received large sums of money from some quarter, and indeed was the main circumstance which fastened suspicion upon him and caused his arrest.

25. One piece of external evidence is of so remarkable a character that it deserves rather more detailed mention. On the 9th of November, when all Colonel Phayre's servants were put under examination, Raoji's belt of office was taken away from him and was hung up in a room. On the 15th of December the belt was given to another peon named Budhar. At that time nobody could anticipate the story that Raoji had to tell, or that he had any story to tell at all. He was arrested on the 22nd December, and made statements on the 24th and 25th. It then occurred to Akbar Ali, the head of the Bombay Detective Police, that there might be some trace of some of the powders spoken of by Raoji, and he asked him where he used to keep his packets of powder. Raoji said that he kept them in his belt. Budhar was sent for and came wearing the belt, which he had had in his possession ever since the 15th. Budhar gave the belt to Akbar Ali, and Raoji showed him where he kept the packets. Akbar Ali searched and found a piece of white thread and a packet of paper. He immediately called Mr. Souter, the Police Commissioner, who was in the next room, and Mr. Souter took out the packet of paper and opened it. The paper contained a white powder, which on being analysed was found to be arsenic. Dr. Gray states that in physical characters there are varieties of white arsenic, but that his examination of the powder taken from Raoji's belt enabled him to know that it was of the same character as the arsenic which was found in Colonel Phayre's sherbet.

26. Now up to this time Raoji had not stated anything about a powder remaining in his possession. He had made a statement in which he said that he had received powders on two occasions. On the second occasion he had received a single packet, the whole contents of which he put into Colonel Phayre's sherbet on the 9th November. On the first occasion he had received two packets, which he had mixed, and put into the sherbet on two or three days. When the packet was found in his belt, he recollected that he had not used the whole of one of the powders—a point which he further explained in his examination before the Commission.

27. Now the only explanation which is suggested of this corroborative circumstances is that the whole thing was

a plot of the police—a point which the counsel for the Gaekwar endeavoured to establish. But he could elicit no evidence in his favour, and the hypothesis is one which, if not impossible, is of the highest improbability. Why the police should have thought of producing a remnant of poison in the teeth of Raoji's statement that he had used the whole; why they should have put into the belt pure arsenic and not mixed arsenic and diamond dust, which was the material said to have been used; how they came to pitch upon the very quality of arsenic used to poison Colonel Phayre; how they could have secretly got it into the belt which Budhar had continuously possessed from the 15th of December till the moment of discovery: these difficulties and others besides must be explained before the hypothesis of a plot by the police can be made on even plausible grounds.

28(*e*). Have, then, these witnesses any interest to tell the story they have told? Nobody has suggested that either of them has any enmity against the Gaekwar, or could gain anything by his downfall. Raoji, it is true, had an interest to tell some story, because he was promised a pardon for himself if he would speak the truth. But his interest was to earn his pardon, and therefore to tell a true story; or if he told a false one, his interest was not to tell one in which a number of other persons were mixed up by whom he could be refuted, nor one implicating a great personage with every means at his command for exposing the falsehood, but one carefully isolated from other persons and from specific circumstances, so as to afford the smallest possible opportunity for contradiction, and one implicating only meaner people who could not so well defend themselves. As for Nursoo, he spoke at the peril of his life. He was expressly warned that he would not earn a pardon. His interest was to be silent, or else to tell a story in which he should not be one of the principal actors in the commission of the crime. The conclusion on this point must be that if the witnesses have spoken falsely, they have not spoken in accordance with their own interests, and that one of them has spoken directly against his own interest.

29. It might have been alleged that Colonel Phayre's strong feeling against the Gaekwar was well known to the Residency servants, and therefore that Raoji and Nursoo might have supposed that their accusation of the Gaekwar would have been agreeable to Colonel Phayre. But it is to be observed that the accusation was not brought forward while Colonel Phayre was Resident at Baroda, and when the first inquiry was made by him. The evidence of Raoji and Nursoo implicating the Gaekwar was not given until Colonel Phayre had been removed from the office of Resident at Baroda, when no advantage could have been expected by them from his favour. This circumstance combines with others to show that the confessions of these men were not the outcome of any plot, but were due to their knowledge that enquiry had at length got upon the right track, and that they had better give themselves up.

30(*f*). The suggestion of collusion is refuted both by internal and external evidence. If these stories were fictitious, agreed on by Raoji and Nursoo, it is hardly conceivable that they would not, especially under the stress of a skilful cross-examination, betray evidence of their origin. They would be found jarring with one another on some essential point, in some irreconcilable manner, or else agreeing in such minute particulars as are always the subject of difference when related independently by different persons. But the inference drawn by the Government of India from their consideration of the points of resemblance and difference between the two stories has been before stated. As regards external evidence, it is stated positively, and nowhere contradicted, that Raoji and Nursoo were kept apart from the first arrest of the former on the 22nd December; that neither was ever informed of the statement of the

other; and that when Nursoo was brought into Raoji's presence on the 23rd December, all that he was informed of Raoji's doings was by means of Raoji's statement that he had told all *up to his neck.*

31(*g*). But it may be suggested that the stories of Raoji and Nursoo are due to their having been tutored by some authority to whom they were subject—in other words, that they were invented by the police. Indeed suggestions of this kind form a very prominent part of the argument delivered on behalf of the Gaekwar. The Gaekwar's counsel attacked the characters of the police, from Mr. Souter downwards, using even the expression that they had applied torture to the witnesses; and repeatedly sought to deliver himself from the difficulties of the evidence by attributing its origin to the police. The sole evidence which he was able to elicit in support of these attacks was that of the witness Hemchund, who was called with reference to a minor part of the case, *viz.*, the purchase of diamonds. He was one of the witnesses who were not kept under arrest, and by his evidence before the Commissioners he contradicted his original statement made to the police. To justify his contradiction, he said that his original statement was made under compulsion by Gujanund Vithul, one of the police officers, who even forced him to make a false entry in his books. Of this witness Hemchund, the three Commissioners who signed the joint report say, that he contradicted himself violently, and that no reliance can be placed on his evidence generally. When before the Commissioners, he denied his own signature, and falsely pretended not to understand any Hindustani, or even to know that such a language existed. The three Commissioners disbelieved that the compulsion he speaks of was put upon him. So do the Government of India. It is sufficient here to say that his original statement was not taken down by Gujanund Vithul, but Mr. Souter, and that two days afterwards it was signed by Hemchund in the presence of Sir Lewis Pelly, and that he made no remonstrance to either of those gentlemen, though he must have known that at least Sir Lewis Pelley would afford him as complete and instant protection from Gujanund Vithul as the Commissioners themselves would. This circumstance, coupled with the patent mendacity of the witness and his eagerness to disconnect himself from every portion of the case, compel the Government of India to say that his evidence must be wholly set aside.

32. But when Hemchund is set aside, there remains no evidence at all to support the suggestion that the police have invented any part of the story told by Raoji and Nursoo, or drilled the witnesses. Why they should think of inventing such a story is not easy to understand, for they certainly could not suppose that by doing so they were doing any welcome service to the Government of India. Mr. Souter, Akbar Ali, Abdool Ali, and Gujanund Vithul, are all men distinguished in the service of the Bombay Government. Mr. Ballantine could elicit nothing to their discredit in cross-examination, though in the case of Gujanund Vithul he was instructed to make the attempt. All were acting under the instructions of Sir Lewis Pelly, who would have taken instant and severe notice of any species of unfairness. From the time of his arrest Nursoo was not under the custody of the police, but under a military guard. There is no evidence whatever to show that the police had such access to them as would have rendered it possible that an elaborate plot could have been successfully concocted and the witnesses instructed for their performance before the Commission. Moreover, the same internal evidence which bears against the theory of collusion between Raoji and Nursoo, bears equally against the theory of invention by the police. Under these circumstances, the Government of India think it a matter of moral certainty that the stories told by Raoji and Nursoo were not the inventions of the police. They wish to express their concurrence

in the remarks which fell from the Advocate-General of Bombay on this subject. And they add that the great reliance placed by Mr. Ballantine on the resource of attacking the police, unsupported as his attacks are by any evidence, is, to their minds, a strong proof of the weakness of the case he had to support.

33(*h*). As regards the demeanor of these two men under examination the Government of India find no suggestion even from the Gaekwar's counsel that it told against them while the three Commissioners who have signed the joint report have put it on record that Nursoo's manner impressed them favourably. He certainly was urged most powerfully by Sir Dinkur Rao, a gentleman of his own religion and one likely to have great influence with him; and the result of that urgency so far as it can be gathered from writing, was such as to give a strong impression of the man's sincerity. The Government of India subjoin here what passed, taking the account from the short-hand writer's notes, not because they are at variance with the official notes but because the questions are given as well as the answers, and so it is shown in a more striking way how the witness was urged and how he insisted that there was but one truth, and that was the truth which he had told:—

"By Sir Dinkur Rao—You are a servant of thirty-four years. Have you been in the habit of visiting the Maharajah from the time of the previous Commission or before?—From the time of the previous Commission I visited the Maharajah, but not previously. I never used to go before Khunderao except in Kutcherry with the Sahib.

"Have you never gone to the Maharajah Khunderao's to ask for Dusserah presents?—Some minor Sirdars used to give presents, but it was not customary for the Durbar to give presents. The Dewan Rao Sahib used to give directly, but there was no such custom in the Durbar.

"When the Maharaja instigated you to poison, this was a very bad thing. Did you make arrangements for the support of your family?—I did nothing. He said merely by words what was said through Raoji.

"The Advocate-General objected to the interpretation. He said that what the witness said was: 'He gave me a verbal assurance.'

"Mr. Melvill—What the witness really said was, 'He relied upon what the Maharaja said.'

"Sir Dinkur Rao—It is a very serious thing to poison one. Would anybody do such a matter in the presence of ten or twelve persons?—There were not ten persons. There were two of his servants and two of ours.

"Was the quantity of poison used small or large, and was it administered three times?—In my life I have not given any poison. A packet was given to me, and I was told to give it to Raoji, and I gave it to him. The arrangements as to how much to use and not lay with Raoji.

"What servants said that accusations should be made against Faizu?—No one said so. They mentioned his name in the statements, and therefore I also caused it to be written.

"Who mentioned his name?—Abdoola, Pedro, and the Hamals—five or six persons altogether.

"At the first meeting the Maharaja called you a rogue. How, then, did he come to trust you in such a serious matter?—Raoji, Salim and Yeshwunt Rao took me and they assured the Maharaja.

"Are you a Hindoo?—Yes.

"What is your caste?—A Talingan Camatee.

"Are you afraid of the Police?—Why? Why should there be fear for speaking the truth?

"Do you yourself believe that you are guilty?—It is my bad luck; I also am concerned.

"If you were granted a pardon, would you in the presence of God tell the truth?—It is not because I may get a pardon that I tell the truth. Whether or not the Sarkar gives me a pardon, they are my parents.

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"Mr. Melvill—That is not a correct interpretation. What the witness said was: 'If I were offered a pardon, I would speak the truth. I am speaking the truth now.'

"(Question repeated.)

"Witness—I know nothing more than this, which is true.

"The President—Sir Dinkur Rao's question, as I understand it, was, whether if the witness were offered a pardon he would tell a more truthful statement than he is now giving. Repeat that question.

"(Question repeated by interpreter.)

"Witness—What was truth I have said. Beside that there is no other truth. The Sirkar may kill me if they like.

"By Sir Dinkur Rao—You have served a person thirty-four years, against whom you have done basely. Now, as you, if you were in the presence of God, state the truth. Do not be afraid. Whatever is in your mind state it without fear in the presence of God?—I have stated without fear what I had to say.

"The President (to Interpreter)—Put the question in this way: 'In the presence of God will you tell the truth?'

"(Question repeated by Interpreter.)

"Witness—In the presence of God I have stated what was the truth. I have not stated an untruth. I have stated the truth.

"Witness then retired."

34(*i*). It remains to ask how the evidence of these men has been met on the part of the Gaekwar. The answer is that his advisers preferred to rely on discrepancies between witnesses, on their infirmities of memory, on improbabilities, and on attacks upon the agents of the Government, instead of bringing forward the persons who, if the charges against the Gaekwar were false, could at once disprove them by direct evidence. According to the stories told by Raoji and Nursoo, as well as by the ayah, Amina, and the several other witnesses who prove the secret interviews, there were two men, Salim and Yeshwunt Rao, who intervened at every turn of the transactions. They were the confidential agents of the Gaekwar. It has been above shown (paragraph 17) that they received large sums of secret service money. When arrested these men were placed under a military guard, and were not in the hands of the Police. It was stated by the Advocate-General of Bombay openly and without contradiction "that they have had no communication whatever with the Police, and that since the arrest of His Highness his solicitors have been allowed the most unrestricted private communication with them." They never volunteered any information as other accomplices did, and it was their strongest interest to assert the innocence of the Gaekwar. The legal advisers of the Government of India had no reason to believe that the interests of truth, as the evidence before them showed it to be, would be any way promoted by the examination of these men. But the Gaekwar was in a very different position. He knows, of his own knowledge, though others can only infer from evidence, what the truth is: and he knows that it is known to Salim and Yeshwunt Rao. According to his case the truth is that there was no plot in the Palace against Colonel Phayre, and that Salim and Yeshwunt Rao knew the fact as well as himself. Why, then, were not these men called upon to say what was at once the righteous thing and the thing most advantageous to themselves and to the master they served? The reasons assigned by his counsel are that "he (the Gaekwar) cannot tell, and his advisers are unable to suggest with any certainty, whether these men are or are not accomplices with Damodhur Punt," and "that they would have come out of a custody from which nothing could be safe." If the second of these reasons is meant to be an addition to the numerous suggestions of conspiracy by the Police, it is founded on an error in fact. Yet it can hardly have been meant to suggest that the military also are parties to a plot against the Gaekwar. But the reasons may be left to speak

for themselves. The Government of India have no hesitation in saying that the refusal on the Gaekwar's part to call upon Salim and Yeshwunt Rao to come forward to speak to honest truth, and to confound Raoji, Nursoo and the others, lends a strong probability to the truthfulness of the charges against him.

35. It is next to be seen what support the evidence of Raoji and Nursoo receives from independent witnesses, so far as it relates to the actual instigation to poison. It must be remembered that so far as it relates to interviews with the Gaekwar and the receipt of money from him, it has received ample support of this kind.

36. It receives some material support from the ayah, Amina, an ignorant and timid witness, but one against whose truthfulness no imputation can be maintained. At her last interview with the Gaekwar, which was probably during the latter part of October, the subject of machinations against the person of Colonel Phayre was broached. It does not seem that poison was mentioned, and it is not clear, nor perhaps is it very material, whether or no the witness thought that poison was hinted at under the expression of a "charm," or of "something being given." What remains certain is that some physical operation on Colonel Phayre for the purpose of producing either a physical or a mental effect was spoken of, that Amina was thoroughly frightened, that she warned the Gaekwar not to make attempts against Colonel Phayre, for that if he did so he would be ruined, and that she went away and never returned again.

37. Amina is corroborated by her husband, Sheikh Abdulla, who says that she told him on the following morning that the Gaekwar had enquired if anything could be given to those people to bring about a union between the hearts of himself and the Saheb, and that she had warned him against giving the Saheb anything to eat. By the expression "the Saheb," Colonel Phayre is meant.

38. Nor must the evidence of Damodhur Punt, the Gaekwar's Private Secretary, be forgotten. The position of this witness is very unsatisfactory, for he is, by his own account, a guilty accomplice, and he spoke under promise of pardon and, as he says, because he was weary of confinement. The three Commissioners who have signed the joint report have accordingly dealt cautiously with his evidence, which, however, they think to be probable in its essential points. The Government of India think it right to give the utmost weight to the drawbacks from this evidence, and not to use it except when it receives some support from other evidence. But after allowing full scope to doubts, they find a substantial correspondence between the story told by Damodhur Punt and those told by Raoji and Nursoo, of which he was in ignorance; and in addition, there are two specific instances in which Damodhur Punt's story is corroborated by trustworthy extrinsic evidence.

39. First, Exhibit Z. is an undisputedly genuine document, and that shows that as early as the 4th October 1874, arsenic was wanted by Damodhur Punt for some purpose, and that he alleged it to be required by the Gaekwar. The arsenic was not given out, because a written order could not be, or at all events was not, obtained from the Gaekwar for the purpose. It is impossible to suppose that an allegation appearing on this document upon the 4th October was any part of a plot against the Gaekwar. Exhibit Z. requires some explanation, and none has been given except that of Damodhur Punt, *viz.*, that the Gaekwar did actually order him to get some arsenic.

40. Secondly, Nanaji Vithul, the keeper of the jewels, a witness not implicated in the plot against Colonel Phayre, shows that, some little time before the 20th October, diamonds were wanted, not for any ordinary purpose, but, as was stated, for medicinal purposes; "to be made ashes," as he says, "for medicine." He never knew of such a thing before. That the Palace accounts have been tampered with and falsified so as to conceal some transactions with diamonds

about this time, is proved by Exhibit T1, as explained by the evidence of the Brahmin, Rameshwar Moroji, and of Nanaji Vithul and his subordinate Atmaram. Again, these phenomena require some explanation, and none is given except that of Damodhur Punt, *viz.*, that the Gaekwar did want some diamonds for the purpose of making a poisonous powder.

41. With regard to the points to which a large part of the evidence of Damodhur Punt has been directed, *viz.*, the proof of the purchase of arsenic and diamonds in particular quarters, the three Commissioners who have signed the joint report think that the purchase of the former is probable and that of the latter is proved. The Government of India are unable to attach much importance to these points. It has never occurred to them that the Gaekwar could have had any difficulty in procuring as much arsenic and as many diamonds as he wished, nor do they suppose that their legal advisers would have spent any pains in procuring evidence on such points, only that Damodhur Punt volunteered information about them as part of the story he had to tell. But the evidence of Damodhur Punt was no part of the evidence laid before the Government of India on which they directed this enquiry, and which they were advised would, if unshaken, warrant conclusions against the Gaekwar.

42. The Government of India think it right now to notice in detail the reasons given by the three Commissioners, who have signed separate reports, for thinking that the evidence given by the witnesses on the charge of poisoning is so far defective that it cannot be taken as proving the offence imputed to the Gaekwar.

43. The Maharaja Scindia says that out of a large number of persons connected with the case only three witnesses, Raoji, Nursoo, and Damodhur Punt have given their evidence in reference to the above charge, and that all these widely differ in their statements. His Highness has, however, overlooked the evidence of Amina, which, as above shown, has an important bearing on this charge. As to the witnesses all differing widely in their statements, the Government of India hardly know what differences between Raoji and Nursoo on the one hand, and Damodhur Punt on the other, are referred to. The differences between Raoji and Nursoo do not, as above stated, touch the essential points of their story. The circumstance that there are only four witnesses, or even only three, to give direct evidence upon a particular charge, does not make the evidence incredible or even weak. It must stand the test of a rigid examination, and if it does, it is not to be rejected because the witnesses are not numerous.

44. The Maharaja then says that the evidence of Pedro and Abdulla (clearly meaning Abdulla, the 17th witness) is in favour of the accused. Now the Government of India cannot see how the evidence of Abdulla bears upon the point at all. As for Pedro, he was inculpated by Raoji, and he denies all complicity in the plot. He, therefore, contradicts Raoji upon the one point of his own complicity, and with which of them the truth lies cannot easily be told. He says nothing to implicate the Gaekwar in the attempt to poison, but in other sense is his evidence in favour of the Gaekwar. On the contrary, he confirms Raoji's evidence so far as it relates to intercourse between the Gaekwar and the Residency servants. He admits that he received money from the Gaekwar, not on the occasion of any festivity, nor for any apparent reason, unless it was an inducement to him to visit the Gaekwar, which he was urged to do by Salim but says that he refused to do.

45. Again, the Maharaja says that the nonproduction of Salim, Yeshwunt Rao, Khanvelkar, Gujaba, Nurudin Borah, and the Hakim is in favor of the accused. There is a distinction to be taken between these persons. Nurudin Borah is a vendor of drugs, and Damodhur Punt, alleges that the arsenic

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employed to poison Colonel Phayre was procured from him. Nothing is alleged against Nurudin Borah's innocence in the matter. The only point to which he could have spoken is the purchase or non-purchase of arsenic by Damodhur Punt. Now it has been above stated that this matter of the purchase of arsenic was a portion, but a very immaterial portion of Damodhur Punt's statement. That statement was given in its integrity, and for what it was worth. His assertion that he purchased arsenic of Nurudin Borah is not sustained by any other evidence. Nurudin Borah should have been called upon to prove it if that had been material, and as he was not called, the Gaekwar is entitled to the benefit of the observation that the purchase has not been proved. Beyond that the non-production of Nurudin Borah does not affect the case.

46. The case is very different with respect to the other witnesses. It has been already shown how it stands with respect to Salim and Yeshwunt Rao; that the reference from their non-appearance is that the Gaekwar, who knew exactly what they could truthfully say, was afraid of it. The same observations, though in a far minor degree are applicable to Khanvelkor, Gujaba and the Hakim. These witnesses could only speak to the minor question of the procurement of the materials for poison. They were in intimate connection with the Gaekwar, and are all represented by Damodhur Punt as accomplices in the plot against Colonel Phayre. If he has spoken untruly of them, they might have most effectually contradicted him, and the Gaekwar knew whether or no they could do so.

47. Then the Maharaja Scindia feels a difficulty because the poison was given in small quantities, and the transactions extended over a long time. The first observation that occurs upon this is that the difficulty about the quantities applies also to any other theory which may be framed to account for the undoubted fact of the poisoning: for it is pretty clear that small doses must have been administered to Colonel Phayre before the large dose of the 9th November. But the mode of operation is explained naturally enough by Raoji's fear of producing sudden effect which he thought would lead to his detection. The length of time over which the whole transactions extended is not very accurately ascertainable, because the beginning is not fixed; but, allowing the greatest latitude consistent with the evidence, the time extends over some six or seven weeks, and that does not seem a long time for a plan requiring much contrivance, the watching of opportunities, and an allowance for the failure of agents, such as Raoji states to have occurred twice with himself.

48. Then it is observed that there is no sufficient proof of the purchase of diamonds, arsenic or copper, and no paper whatsoever signed by the Gaekwar, involving him in the matter. But it has been already shown in paragraphs 41 and 45, how unnecessary it is to prove any such purchase. And as for papers signed by the Gaekwar, it is not likely that any such papers should be forthcoming in such a case. Certainly the Government of India did not expect to find any.

49. The objections to the evidence which are felt by the Maharaja of Jeypore and Sir Dinkur Rao, do not differ in principle from those felt by the Maharaja Scindia, and most of them have been already observed on, but a few additional details are given, in which it is thought that some important objections to the evidence are to be found.

50. The Maharaja of Jeypore thinks it important that Raoji should have stated that the Gaekwar promised him and Nursoo a lakh of rupees each, while Nursoo only mentions indefinite promises of reward. Now, this is exactly one of those discrepancies which appear to the Government of India to preclude the supposition that the stories of these two witnesses are the result of collusion. The essential point is that a reward was promised. The nature of the reward

may easily have been stated differently to, or have been understood differently by each, especially as it is stated that both Salim and Yeshwunt Rao took part in the conversation. But supposing the story to have been agreed upon between the two, or to have been invented by some third person and taught to the witnesses, it is very difficult to conceive that so obvious and simple a point as the promise of a lakh of rupees would not be dwelt upon, or that one so easy to remember would not have been faithfully reproduced when they came to deliver their evidence.

51. The Maharaja of Jeypore points out truly that the yads produced out of the records of the private office under Damodhur Punt, do not show any specific sums of money having been paid for diamonds, or for poison of any kind. He proceeds as follows: "The sums mentioned in the yads were for giving feasts to Brahmins, and other charitable and useful purposes. There is sufficient evidence also to prove that these sums were actually spent on such purposes." The Government of India hardly know on what view of the evidence respecting the Exhibit T1. the general bearing of which has been stated above this opinion of the Maharaja is based. To their apprehension it is proved that a number of fictitious entries were made in the Gackwar's accounts in order to cover payments the nature of which it was desired to conceal. And it so happens that the particular payment now specified, viz., the payment for a feast to Brahmins mentioned in Exhibit T1. is the one whose false character is shown by the most unassailable evidence. For the Brahmin himself who is named in the entry as the recipient of Rupees 3,632 13 3 in December 1874, was called and proved that no such money was ever paid to him. He pointed out the difference between an entry of money really paid (Exhibit Y1) and the false entry T1. And it so happens that the sum mentioned in T1. is the exact equivalent of the sums mentioned in Exhibits R1 and S1, and paid to Nanaji Vithal, the Superintendent of the Jewel Department.* It was evidently thought desirable to get rid of these sums by some false statement in the accounts. This entry then, which seems satisfactory to the Maharaja of Jeypore, seems, on the contrary, to the Government of India, to be one confirmation of the evidence of Damodhur Punt, as is stated above in paragraph 38.

52. Again, the Maharaja of Jeypore says that copper is mentioned as having been one of the poisons administered to Colonel Phayre, and that it was not detected by the chemical analysis. But that is not according to the evidence. All that appears on that subject is that Bhow Poonekur, speaking from mere heresay, told Colonel Phayre that copper was administered.

53. The Government of India do not understand on what grounds the Maharaja of Jeypore should say that there were no means of ascertaining whether Salim and Yeshwunt Rao made any statements on the subject before the Bombay Police. If either the Gackwar's counsel or the Commissioners themselves desired to ask any question on this subject, they certainly would have been answered both by the Police officers and by the men themselves.

54. The only points added by Sir Dinkur Rao are some discrepancies with respect to dates, on which some general observations have before been made, and some comparisons between the evidence of Raoji and that of Damodhur Punt in which though the witnesses speak of different occurrences, and though it may be said that the two narratives when put together do not make up a complete whole, but leave something untold, the Government of India fail to see any contradiction at all.

55. The result then is that, notwithstanding the doubts entertained by the Maharaja Scindia and Sir Dinkur Rao, and the more positive opinion of the

* The three Commissioners who have signed the joint report have fallen into an arithmetical error on this point.

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Maharaja of Jeypore, the examination of the evidence by the Government of India leads them to concur with the three Commissioners who signed the joint report, that it bears on its face a trustworthy character, and contains no such contradictions or obscurities as would justify them in disbelieving the witnesses on their own showing. Counter-evidence, it has been already stated, there is none; the Gaekwar's advisers have refrained from calling his agents to attest his innocence. His counsel, at the close of his argument, boldly maintained that it was not for him to make out a case on behalf of the Gaekwar. The Government of India think differently. One of the main objects of the enquiry was to afford the Gaekwar an opportunity of freeing himself from the grave suspicion which attached to him. The Government of India think that it was for the Gaekwar's advisers to make out a case, if they could honestly do it, to rebut the strong evidence brought against him, and cannot see any ground for their refusal to do it, except their inability. Neither is there any counter-theory to explain the evidence before the Commission. It is true that the Gaekwar's counsel rather suggested than argued that Damodhur Punt or Bhow Poonekur might be the authors of the attempt to poison. But there is not a particle of evidence to support either suggestion, and both are justly dismissed in very brief terms by the three Commissioners who have signed joint report.

56. It is therefore with great regret that the Government of India are compelled to express their decided opinion that all the offences imputed to the Gaekwar previously to the enquiry have been sustained upon the enquiry, and that he did instigate Raoji and Nursoo to administer poison to Colonel Phayre.

By order of the Governor-General of India in Council,

C. U. AITCHISON,
Secy. to the Govt. of India.

Simla, Foreign Department,
Political, 21st April 1875.

REPORT OF THE EUROPEAN COMMISSIONERS.

WHEREAS by a Commission issued by order of the Viceroy and Governor-General of India in Council under the hand of C. U. Aitchison, Secretary to the Government of India, notified in the *Gazette of India*, dated the 15th of February 1875, and addressed to

The Honourable Sir Richard Couch, Knight, Bachelor, and Chief Justice of Her Majesty's High Court of Judicature at Fort William in Bengal;

His Highness Mookhtar-ool-Moolk, Azeem-ool-Iktidar Rufi-oos-shan, Walla-Shikoe, Mohtashin-i-Dowran, Oomdut-ool-Oomrah, Maharajah Dheeraj, Alijah Maharaja Jeejee Rao Scindiah Bahadoor, Shreensth, Munsoor-i-Zaman, Fidvee-i-Huzrut Malikah-i-Mooazuma, Rafi-ood-Durjeh-i-Inglistan, Maharaja of Gwalior, Knight Grand Command of the Most Exalted Order of the Star of India,

His Highness Siramad-i-Rajaha-i-Hindoostan, Raj Rajendra Sree Maharaja Dheeraj Sewaee Ramsing Bahadoor, Maharaja of Jeypoor, Knight Grand Commander, of the Most Exalted Order of the Star of India;

Colonel Sir Richard John Meade, Knight Commander of the Most Exalted Order of the Star of India, and Chief Commissioner of Mysore and Coorg;

Raja Sir Dinkur Rao, Knight Commander of the Most Exalted Order of the Star of India; and

Philip Sandys Melvill, Esquire, of the Bengal Civil Service, and a Commissioner in the Punjab;

reciting that an attempt had been made at Baroda to poison Colonel R. Phayre, C.B., the late British Resident at the Court of His Highness Mulhar Rao Gaekwar, and that the following offences were imputed against the said Mulhar Rao Gaekwar, that is to say:—

I.—That the said Mulhar Rao Gaekwar did by his agents and in person hold secret communications for improper purposes with some of the servants employed by Colonel Phayre, the Resident at Baroda, or attached to the Residency

o—o

II.—That the said Mulhar Rao Gaekwar gave bribes to some of those servants, or caused such bribes to be given.

III.—That his purposes in holding such communications and giving such bribes were to use the said servants as spies upon Colonel Phayre, and thereby improperly to obtain information of secrets, and to cause injury to Colonel Phayre or to remove him by means of poison.

IV.—That, in fact, an attempt to poison Colonel Phayre was made by persons instigated thereto by the said Mulhar Rao Gaekwar.

And that the Viceroy and Governor-General in Council had temporarily assumed the administration of the Baroda State for the purpose of instituting public enquiry into the truth of the said imputations, and of affording His Highness Mulhar Rao Gaekwar an opportunity of freeing himself from the grave suspicion which attached to him.

Therefore the Viceroy and Governor-General of India in Council appointed the said Sir Richard Couch, the said Maharaja of Gwalior, the said Maharaja of Jeypore, the said Sir Richard John Meade, the said Sir Dinkur Rao, and the said Philip Sandys Melvill, Esquire, to be Commissioners for the purpose of enquiring into the truth of the said imputations and of reporting to the Viceroy and Governor-General in Council how far the same were true to the best of their judgment and belief.

And the said Viceroy and Governor General in Council appointed the said Sir Richard Couch to be President of the Commission, with full power to appoint times and places of meeting, to adjourn meetings, to adjust and arrange the method of procedure, to settle the course which the enquiry shall take to call for and to receive or reject evidence, documentary or otherwise, to hear such persons as he should think fit on behalf either of the Viceroy and Governor-General of India in Council, or of His Highness Mulhar Rao Gaekwar, and generally to guide the whole course of the proceedings of the Commission as from time to time should appear to him to be proper for the purpose thereof.

And after reciting that certain other matters of importance pending between the British Government and His Highness Mulhar Rao Gaekwar were enquired into and reported upon by a Commission appointed by the Viceroy and Governor-General in Council by orders dated 23rd October 1873; and that the enquiry which the said Commissioners were appointed to make was not connected with such matters. For the better understanding of their functions, the said Viceroy and Governor-General in Council thereby declared his desire that they should not extend their enquiry to other matters than the offences imputed to His Highness Mulhar Rao Gaekwar as aforesaid, and that they should not permit any such other matters to be submitted to them for consideration or enquiry.

And the said Viceroy and Governor-General in Council desired that in the event of any of their number being prevented by sickness or other cause from taking his place as Commissioner, or from remaining as Commissioner till the conclusion of their enquiry, the other Commissioners should nevertheless conduct and complete their enquiry in the same way as if the number of Commissioners present or remaining were the whole number appointed thereby.

And the said Viceroy and Governor-General in Council thereby appointed John Jardine, Esquire, of the Bombay Civil Service, to be their Secretary.

And whereas the said Commissioners so appointed as aforesaid met together in the Military Cantonment at Baroda, and commenced the said enquiry on Tuesday, the 23rd day of February 1875. And the said Viceroy and Governor-General of India in Council appeared before them by counsel.

And His Highness Mulhar Rao Gaekwar also appeared by counsel and was personally present.

And the said Commissioners met from time to time by adjournment at the

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place aforesaid, and received the evidence, oral and documentary, produced on behalf of the Viceroy and Governor-General of India in Council, and on behalf of His Highness Mulhar Rao Gaekwar, and a statement in writing of the said Mulhar Rao Gaekwar, and heard counsel respectively on behalf of the Viceroy and Governor-General of India in Council and His Highness Mulhar Rao Gaekwar.

Now we the undersigned three of the Commissioners appointed as aforesaid do make the following report upon the matters so as aforesaid directed to be enquired into:—

I. It is desirable first to record the dates on which some of the important events connected with this enquiry occurred. They are as follows:—

Colonel Phayre assumed his office as Resident of Baroda on the 18th March 1873.

The Commission of Enquiry into the complaint of maladministration on the part of the Gaekwar's Government, brought by the Resident, Colonel Phayre, sat from the beginning of November to the 24th of December 1873.

The Gaekwar Mulhar Rao went to Nausari to celebrate his marriage with Lakshmi Bai accompanied by Colonel Phayre on the 2nd of April 1874, and returned on the 16th of May 1874. The marriage occurred on the 7th of that month.

Lakshmi Bai was delivered of a son on the 16th of October 1874.

The date of the kharita addressed by the Gaekwar to the Viceroy requesting the removal of Colonel Phyare from Baroda is the 2nd of November 1874.

The date of the kharita of the Viceroy announcing the removal of Colonel Phyare from the post of Resident at Baroda, and the appointment of Colonel Sir Lewis Pelly, K. C. S. I., is the 25th of November 1874.

2. The evidence on the record proves in our opinion that an attempt was made on the 9th of November 1873 to poison Colonel Phayre by administering common white arsenic and diamond dust in the glass of sherbet made of pummelo juice which he was in the habit of drinking on his return from his early morning walk. Colonel Phayre returned home at five minutes to seven on that morning, and was met by Raoji, the havildar of peons, who made a salaam to him. Colonel Phayre then entered the room he used as an office and dressing room in a small building which adjoins the main block of the Residency. Having entered that room he found the glass of sherbet placed as usual on the wash-hand-stand, and he took two or three sips, replacing the glass on the wash-hand-stand. He then sat down to write, and in twenty minutes or half an hour felt a sudden sensation of nausea. Thinking that the sherbet disagreed with him, and fearing, as he said, that he might be tempted to drink more of it, he flung the contents of the tumbler into the verandah outside the office room. The greater portion of the contents fell in verandah, but a portion also reached the ground outside the verandah. When replacing the tumbler on the wash-hand-stand, Colonel Phyare's attention was attracted by the colour of a sediment which had remained in the tumbler and of which a portion was still trickling down the side. He describes the sediment as being of a dark colour, and he adds that on holding up the tumbler and looking at it the thought occurred to his mind that he had been poisoned. This was at about 7-30 A. M. Colonel Phayre at once wrote a note to Dr. Seward, the Residency Surgeon, asking him to come over, and Dr. Seward arrived in half or three-quarters of an hour, or about 8 o'clock. Colonel Phayre handed over to Dr. Seward the tumbler containing the remains of the sherbet, amounting, according to Colonel Phayre's account, to 1½ or 2 tea-spoonsful, according to Dr. Seward to less than a desert spoonful. Dr. Seward observed "a little powdery film arise" in the sediment as he shook the tumbler and held it up to the light; and on adding a little water "observed the play of colour on the glistening part of the sediment." Colonel Phayre described the symptoms he

experienced to Dr. Seward, who took the tumbler and its contents to his own house for the purpose of ascertaining what the contents were. Colonel Phayre has deposed that no person had access to the tumbler from the time he sipped the sherbet till the time that he made it over to Dr. Seward. The symptoms experienced by Colonel Phayre are described in a letter, (Exhibit F.) written by him to Dr. Seward at 11 A. M. on the same day, of which an extract here follows:—

"Although I only took two or three sips of the pummelo juice which the tumbler contained, I felt within about an hour, as I described to you, a most unusual sickness of stomach, accompanied by dizziness of the head and of sight, producing confusion of thought, also a most unpleasant metallic taste in the mouth, with slight salvation such as I have never experienced till within the last few days, and which I attributed partly to a slight attack of fever which had, however, quite gone off, partly to an idea that the pummelos from which the juice daily placed on my table had been extracted were not fresh ones."

The metallic taste referred to has been described by Colonel Phayre as being a "coppery" taste; and he states that it commenced about three quarter of an hour after sipping the sherbet, which he says was quite clear in the upper part of the tumbler and had no unpleasant taste.

3. Dr. Seward explains the processes he used for ascertaining the contents of the sediment in the tumbler. He took about one-third of the sediment, equal to from one to two grains in weight, and of a faint fawn or pale grey colour; and mixing a little charcoal with it, put it into a test tube, which he heated over a spirit lamp, with the result of producing a metallic ring on the tube. Again heating the tube, he saw above and below the metallic ring a crystal line deposit which was found under the microscope to consist of octohedral crystals. The metallic ring and the octohedral crystals are stated by this witness to indicate almost entirely the existence of arsenic, and he adds that no other mineral poison would yield the same appearance. The rising of the film in the sediment is also an indication of the same poison.

The remainder of the sediment which Dr. Seward had not experimented upon he sent on the morning of the 10th of November to Dr. Gray, the Chemical Analyser to Government at Bombay, having reduced it to the condition of powder by the application of a blotting paper filter and heat.

4. Some days after having made the test of reduction by charcoal as above related, Dr. Seward made a further experiment which he thus describes, with the substance that remained in his test tube. He removed the mixture from the tube and threw it upon the surface of some water. Allowing the heavier particles to sink to the bottom, he rapidly poured off that which was floating. After repeating this process several times, he collected the sediment, and placed it on some glass slides, which he produced before the Commission. He put the slides under a microscope, and perceived that the sediment consisted mainly of lustrous crystalline fragments. Passing a clean glass slide over one of the slides covered with the sediment, he found that its surface was scratched. He repeated this experiment before the Commission, the clean slide being readily scratched on being rubbed against the charged slide. Dr. Seward explains that he did not test for copper, but only for arsenic, and that poisonous portion of the sediment was the arsenic and not the diamond dust. He did not weigh the sediment that he obtained in the tumbler.

5. Before going on to describe the result of Dr. Gray's analysis of the powder sent to him by Dr. Seward on the 10th of November, it is necessary to refer to two other packets that were also sent to Dr. Gray for analysis. These are first, a packet containing scrapings of the chunam floor of the verandah into which Colonel Phyare threw the sherbet. Colonel Phyare's

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evidence and his (Exhibit I) letter to Dr. Gray show that in consequence of a suggestion thrown out by Dr. Gray to Dr. Seward, and communicated by Dr. Seward to Colonel Phayre, the latter witness, on the morning of the 15th of November, caused one of his peons, in his presence, to scrape as much deposit as could be found on the chunam floor of the verandah where the contents of the tumbler fell. These scrapings were made up by Colonel Phayre himself with a packet, which was forwarded to Dr. Gray on the 16th of November under due precautions. The second packet was found in Raoji's belt on the 25th of December 1874 in the presence of the Commissioner of Police, Mr. Souter, by whom it was taken to Bombay and delivered to Dr. Gray on the 30th idem.

6. The following is an abstract of the evidence of Dr. Gray, Chemical Analyser to Government at Bombay. He received the three packets above referred to in such a condition and in such a way as to exclude any idea of their having been tampered with *en route*.

The first packet forwarded to him by Dr. Seward contained 1½ grains of powder of a greyish colour, composed partially of glittering particles. He applied the test by sublimation to a small portion of the powder, the result by microscopical examination being the existence of eight-sided crystals. He made a solution of the crystals by boiling them in water. Taking part of the solution, he added to it ammonio-nitrate of silver, and it produced a pale yellow precipitate.

To another part of the solution he added ammonio-sulphate of copper, and the result was a pale green precipitate.

In the remainder of the solution he put muriatic acid, boiled the solution, and passed sulphuretted hydrogen gas through it, the result being a bright yellow precipitate.

He then added ammonia to the three precipitates, reserving, however, a portion of the third precipitate. They all dissolved.

The reserved portion of the third precipitate he boiled with strong muriatic acid, and it did not disolved.

All these tests satisfied Dr. Grey that the crystals he had produced by the process of sublimation were crystals of white arsenic.

He made further experiments with the powder he received from Dr. Seward. He boiled a small portion of it with water and muriatic acid, and threw two pieces of clean copper-foil into the boiling liquid, which continued to boil. In a few seconds the copper-foil became covered with a grey metallic deposit. One of the pieces of copper-foil he dried and heated in a test tube, on the side of which a white sublimate formed consisting of eight sided crystals. To these crystals he applied the same kind of tests as those already described and with the same results.

7. Dr. Grey also tried the test by reduction with charcoal on a portion of the powder received from Dr. Seward. He produced before the Commission the test tube with the metallic ring, which he states is one of the signs of the presence of arsenic. He did not reduce the ring to white arsenic by heating.

8. In regard to the glittering particles contained in the powder received from Dr. Seward, Dr. Gray deposes that they were not in any way affected by the experiments above described. He examined them under a microscope, and at first thought they might be powdered glass or quartz; but on looking at them on the following day (the 12th of November) on the piece of blotting paper, he was led by simple inspection to think that they were diamonds on account of their brilliancy. He tried to dissolve them in all the ordinary acids, and with an alkali, but the particles were not soluble: and he came to the conclusion that they were diamond dust as the result of his independent enquiries, he not having at that time (the 13th of November) received any intimation that the powder might contain diamond dust.

9. The second packet forwarded by Colonel Phayre with Exhibit I was

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received by Dr. Gray no the 17th of November. It contained earthy matter, in weight 17 grains, which on examination by the same test as those applied to the contents of the first packet, proved to be arsenic, sand and diamond dust. One grain of arsenic was found by Dr. Gray in the packet forwarded by Dr. Seward, and $1\frac{1}{4}$ grain in that forwarded by Colonel Phayre, total $2\frac{1}{4}$ grains. Under circumstances favourable for its action $2\frac{1}{2}$ grains are, Dr. Gray says, a fatal dose for an adult, and the effect of arsenic shows itself, in the majority of cases, in from half an hour to an hour. Diamond dust according to the best authorities has no injurious effect on the human body.

Dr. Gray considers the rising of the film in the sediment, as described by Dr. Seward, to be a likely result of the presence of arsenic in the tumbler.

10. The third packet delivered by Mr. Souter on the 30th of December 1874, Dr. Gray found to contain 7 grains of white arsenic of the same description and physical character as that found in the other two. He judged this from ocular inspection with a microscope.

11. The alleged existence of a metallic taste in the mouth of persons suffering from arsenical poisoning is a fact which has once come under Dr. Gray's personal experience, and one that is constantly referred to in cases that are set up to him in his capacity of Chemical Analyser. He himself has taken arsenic for the purpose of ascertaining whether it has any taste, but has found it to be tasteless.

Dr. Gray directed his attention to the discovery of copper in the powders, but found no trace of it.

12. The usual symptoms of poisoning by arsenic are stated by Dr. Gray to be dizziness, nausea followed by vomiting, burning pain in the stomach, and purging. Chronic poisoning, or repeated small doses of arsenic, he says, cause watering of the eyes; and if arsenic is applied to a wound it produces injurious effects which may end in the death of the sufferer. He things that Colonel Phayre must have taken very little arsenic, but that he took sufficient to cause nausea, which would produce salivation, nausea being a preliminary of salivation.

13. In connection with this part of the case it is to be observed that Colonel Phayre in his evidence states that he was ailing from about the middle of September 1874. He had a cold in his head and a boil on his forehead, for which Dr. Seward attended him. A plaster was put on the boil by Dr. Seward, and the spare plaster used to remain on a table in his office room. Collodion was applied by Colonel Phayre himself to the boil in such a way that he had difficulty in removing the lint with which he had applied it. This occurred one morning between 8 and 9 o'clock, when Colonel Phayre was standing near the wash-hand-stand in his office, whence he would be visible to the peons who had their post in the verandah leading into that room. Both before and after the application of the plaster Colonel Phayre suffered from slight fever and fulness in the head, and the eyes watered a great deal. He suspected that his sherbet was not properly made from the beginning of October 1874. On the 6th of November he took a sip or two of the sherbet and felt unwell, having fulness in the head, and being sleepy, and generally having sensations like those he had experienced in the early part of October. On the 7th of November he also took a little of the sherbet, and was conscious of having the same symptoms as on the previous day, though in worse degree. On the 8th he took no sherbet, as he had felt so ill on the preceding day.

The mention of the symptoms Colonel Phayre had noticed between the middle of September and the 9th of November will be found to be of some importance with reference to the evidence of some of the later witnesses in this country.

14. It is obvious that as $2\frac{1}{4}$ grains of arsenic were found in the sediment of the tumbler, and in the scrapings of the verandah, and larger quantity of arsenic than would suffice to produce a fatal

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result must have been put into the tumbler, for it is not possible that all the arsenic contained in the sherbet was recovered from the verandah, and the quantity of the arsenic reproduced in the form of crystals by Dr. Seward's experiments is not known.

15. Having shown that poison was actually placed in Colonel Phayre's glass, the next question to consider is, by whom it was given. Abdulla Khan, who had been Colonel Phayre's servant for 15 or 16 years, was charged with the duty of preparing the sherbet daily but in his absence it was the duty of the butler to prepare it. Abdulla prepared it on the morning of the 9th of November from pure pummelo juice, and placed the tumbler containing it on the wash-hand-stand in the office room, which, at the time he did so (about 6-30 A.M.) Govind Balu and Yellapa were sweeping and cleaning. Abdulla, having taken out his master's clothes for the day, left the room. Govind Balu, house-servant at the Residency, states that he and Yellappa cleaned out the office room on the morning of the 9th of November during the time Colonel Phayre was out for his walk; that he put fresh water into the water-bottle on the wash-hand-stand, doubtless the bottle from Dr. Seward poured a little water into the tumbler containing the sediment; that he got that water from the earthen vessel standing in the verandah of the main building from which water was supplied to the European inhabitants of the Residency; and that he left the room at about 7 o'clock before Colonel Phayre's return. He states that he saw Abdulla come into the room, arrange his master's clothes, and go out, but that he did not observe that he brought the sherbet. Lakshiman Dariao Singh, peon, was outside the room. After Abdulla left the room, Govind Balu states that Raoji, havildar of peons, (a petty officer, the lowest grade of officers is naik: then above him is the havildar, and above him the jemadar,) entered Colonel Phayre's office room, and was in it for 5 or 6 minutes, during which time he emptied the waste-paper basket which stood near the writing-table into another basket, which was kept in the ante-room through which access is obtained to the office room. It may be here noticed, as a fact within the personal cognizance of some of the members of the Commission, that the office room is of small dimensions.

Yellappa confirms Govind Balu's statement that he was also employed in cleaning out the office room on that morning, but he gives no further particulars. Lakshiman Dariao Singh deposes to his having arranged Colonel Phayre's writing-table on the morning of the 9th of November, having done which he sat at the place allotted to the peons in attendance, and observed nothing further.

16. There does not appear to be any ground for suspecting that any of these persons put poison into the sherbet. Raoji confesses that he did so, and we think that his evidence on this point may be accepted as true.

17. It is now necessary to consider in detail the evidence of Raoji and other witnesses with a view to ascertaining whether Raoji was instigated to poison Colonel Phayre, and if so, by whom he was so instigated.

18. The evidence of Raoji is to the following effect:—

He was appointed by Colonel Phayre to be havildar of peons a year or a year and a quarter ago, and lived in the bazaar in the Baroda camp. Two months before the Commission of 1873 commenced its sittings, Salim made repeated overtures to him to visit the Gaekwar. He at last consented, and went at about that time, *i. e.*, two months before the sitting of the Commission, with Salim and Eshwunt Rao whom he met at Eshwunt Rao's house in the city of Baroda, to the Gaekwar's Palace in the city, and there had an interview with the Gaekwar in the presence of Salim and Eshwunt Rao.

The Gaekwar asked him to send him information about the Residency, promising to give him rewards if he did so, and enquired whether Nursu jemadar of peons at the Residency, was his friend.

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Raoji agreed to send the information desired, said that Nursu was his friend, and on being requested by the Gaekwar to do so, consented to bring Nursu to see His Highness. The next day Raoji told Nursu of this visit and of the invitation which had been sent to him, but Nursu excused himself from going then on the plea of want of leisure.

19. Before proceeding further with the evidence of this witness, it will be convenient to explain that Salim is an Arab, living in the city of Baroda, and that he was a horseman (sowar) in the service of, and in constant attendance on, the Gaekwar. Eshwunt Rao is a Jasud (called also Jesus) or personal messenger of the Gaekwar, and also resided in the city. The room in which this interview is said to have taken place is the same as that in which all the interviews which will be described between the Gaekwar and the Residency servants were held. It was inspected by some members of the Commission, and it may be described as a small room on the third storey, entered at one corner by the narrow flight of stairs which leads from the entrance of the Palace close to the rear and the Nazarbagh (garden). The stairs terminate inside this little room, and they are not shut off by a door. The room is in fact an ante-room, in which there is a single door leading into the private apartment of the Gaekwar, where he had a bed and a bathing chair, and appliances for ablution. In the ante-room there are several mirrors attached to the walls, and there is a low and broad wooden bench on which His Highness is said to have sat on nearly every occasion of his meeting the servants. We now resume the thread of Raoji's statement.

20. Raoji paid three or four other visits to the Gaekwar, before the Commission of 1873 sat, and he paid three visits while the Commission was sitting. On each of these occasions he first went to Eshwunt Rao's house, and from thence he went to the Palace, accompanied by Eshwunt Rao and Salim. At these visits Raoji told the Gaekwar about the persons who came to the Residency, the events that happened there, and the complaints that were made against the Gaekwar's administration at the Residency and before the Commission.

21. At one of the visits paid on a Friday while the Commission was sitting, Raoji informed the Gaekwar that he was going to be married, and the Gaekwar directed Eshwunt Rao to remind him of it. On the following Monday, when the Gaekwar visited the Residency, Eshwunt Rao informed Raoji that he had brought Rupees 500 for him, and desired him to go to his house in the evening and receive that sum. Accordingly Raoji went in the evening to Eshwunt Rao's house accompanied by Jugga, a punkah-puller employed at the Residency, and there he received from Dalpat, Eshwunt Rao's clerk, Rupees 500, Jagga being present but not Eshwunt Rao, who was upstairs, Rupees 400 were spent by Raoji in the purchase of ornaments for his marriage, and Rupees 100 he deposited with Jagga. There is no evidence on the record which directly corroborates truth of Raoji's statement in regard to any of the visits above related except that on which the present of Rupees 500 was spoken about. But it will be shown further on that about the time these earlier visits were being paid, the Gaekwar was also receiving visits from the woman, Amina, who was an ayah in the service first of Mrs. Phayre, and subsequently of Mrs. Boevey, Mrs. Phayre's daughter, and wife of the Assistant Resident at Baroda. There is, however, evidence to corroborate the payment of the Rupees 500, and to this it is expedient now to draw attention, leaving Raoji's further narrative for the present.

22. Jagga (No. 28, son of Bhagwan) states that he accompanied Raoji to Eshwunt Rao's house one evening "fourteen or fifteen months ago," which would be about December 1873 (the Commission, it will be remembered, was sitting during November and December 1873), and that the Rupees 500 were paid to Raoji by Eshwunt Rao's *karkun* or clerk, of which sum Raoji took away Rupees 400 and gave Rupees 100 to him, Jagga, to keep.

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Dalpat, the clerk, deposes to having paid 500 Baroda rupees at 8 P. M. twelve or fourteen months ago to Raoji and Jagga by the order of Eshwunt Rao, who at the time of the payment was upstairs, and not, therefore, present.

Dajiba (No. 30) was the person employed by Raoji to get the ornaments for his marriage made. He shows that about the time of the last (a dewali festival) but one, which was on the 20th October 1873, he employed Shivlal Vithul, a goldsmith, to make up for Raoji various gold and silver ornaments for the person. These ornaments were delivered on two or three occasions as they were ready, and Dajiba got the list. (Exhibit Y.) with the prices from the goldsmith. This list he delivered to the police when the present enquiry was set on foot, and it shows that ornaments to the value of Rupees 558-6-0 were made by Shivlal Vithul for Raoji between November 1873 and March 1874.

Shivlal Vithul corroborates Dajiba in regard to the time of making the ornaments, and the description of ornaments, and he states their value from memory to be Rupees 475 or Rupees 500. He was paid in full for the ornaments by Dajiba and Raoji from time to time.

Dulab, another goldsmith, deposes to having made various ornaments of gold for Raoji in June and August 1874 to the value of Rupees 79-8-0.

Shivlal Vithul and Dulab identified the ornaments they had respectively made, and Raoji admits that they are his property.

Raoji's salary, it may here be noted, was Rupees 10 per mensem.

23. To return to Raoji's evidence, which goes on to describe the visits paid to the Gaekwar after the Commission of 1873 had left Baroda and up to the time that Gaekwar went to Nausari.

Raoji states that eight, nine or ten days after the Commission left Baroda, which would be about the 3rd of January 1874, he visited the Gaekwar at his palace in company with Nursu, jemadar of the Residency peons, Salim having previously informed Raoji that he had brought Nursu over to agreeing to come. The day was Sunday, and according to agreement Nursu, whose house was in the city of Baroda, went to Eshwunt Rao's house. Raoji started in company with either Jagga or Karbhai, both of whom were punkah-pullers at the Residency, and went to Eshwunt Rao's house, where he found Nursu, Eshwunt Rao, and Salim, all of whom accompanied him and his companion (Jagga or Karbha) to the Gaekwar's Palace. Arrived there Salim went upstairs to inform the Gaekwar, and shortly summoned him and Nursu to the presence. At the interview the persons present were Raoji, Nursu, Eshwunt Rao, and Salim. Raoji describes the conversation between the Gaekwar and Nursu on this occasion. The Gaekwar told Nursu that as he lived in the city he should bring information from the Residency every day, and that being an old resident of Baroda, and acquainted with the Sirdars (Nobles,) he should tell him the names of the Sirdars who went to the Residency. The jemadar, Nursu consented, and said that both he and Raoji would communicate the information through Salim; on which the Gaekwar desired that if there was anything of importance to communicate, it should be committed to writing, the jemadar bringing the letter when he came to his house in the city, and giving it to Salim. Nursu said to Gaekwar that his brother's pension had been stopped, and he begged the Gaekwar to make some arrangement about it. The Gaekwar told Nursu to give a petition to the Resident on the subject, promising to make some arrangement if the Resident spoke to him. Two brothers of Nursu were then in the Gaekwar's service as commandant and jemadar of cavalry.

24. Jagga and Karbhai (Nos. 28 and 29) both depose to having gone to the Gaekwar's Palace with Raoji, Nursu, Eshwunt Rao, and Salim, and to having been left downstairs when those persons went up to see the Gaekwar. There are no means of identifying the man who went with the party on this occasion,

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but there can be no doubt that it was either Jagga or Karbhai. Nursu merely states that Raoji had a companion with him, but he does not mention his name.

25. Raoji then goes on to say that he and Nursu visited the Gaekwar again four or five times about or before the departure of His Highness for Nausari (2nd of April 1874,) and that on these occasions they gave information to the Gaekwar of doings at the Residency. It may here be noted that Nursu only speaks of one such visit at this time, *viz.*, his second visit.

26. Raoji states that he and Nursu went to Nausari in attendance on Colonel Phayre, and that he saw among other persons there Salim and Damodhur Punt. Raoji paid one visit to the Gaekwar when at Nausari, introduced by Salim, and Gaekwar asked him about Bhaumoonekur and others who went to the Residency.

27. We now come to Raoji's second of his visits to the Gaekwar after the return from Nausari, which was about the 18th of May 1874, and here we remark that Raoji states that in the visits up to this time the only thing the Gaekwar desired was information about the Residency, and that it was after this event that poison was first mentioned by His Highness.

28. These visits after the return from Nausari are stated by Raoji to have been paid, some in company with Pedro de Souza, some in company with Nursu. Pedro was Colonel Phayre's butler, and had been employed in that capacity for fifteen years, having been in his service altogether for 26 years.

Pedro took leave for a month to Goa; and three of the visits in his company are fixed by Raoji as occurring before his going to Goa, and one after his return from that place. Raoji says that Pedro invited him to go with him to the palace, stating that he (Pedro) had been asked to go there by Salim. Raoji describes the first visit and the conservation thereat with the Gaekwar which he limits to enquiries regarding the conversation at the Residency dinner table, and to a request on the Gaekwar's part that Pedro should send him information through Salim. No details are given in relation to the other two visits.

The last visit with Pedro is stated by Raoji to have been two or three days after Pedro's return from Goa. Now Pedro in his evidence before this Commission does not give the date of his return from Goa; but in his statement before Mr. Edginton, the Deputy Commissioner of Police at Bombay, on the 5th of January 1875, he states that he returned to Baroda from leave on the 3rd of November 1874. Raoji recites the conversation between Pedro and the Gaekwar. After asking Pedro when he had returned from Goa, the Gaekwar said to him—"If I give you something, will you do it?" Pedro said he would, if it were possible. The Gaekwar then spoke to Eshwunt Rao, who handed a paper packet to His Highness' who put it into Pedro's hands. Pedro asked what it was. The Gaekwar said it was poison, and that it should be put into Colonel Phayre's food. Pedro objected that if Colonel Phayre were to die suddenly, he (Pedro) would be taken up and be ruined. The Gaekwar then assured Pedro that nothing would happen suddenly, but that Colonel Phayre would die in two or three months. Raoji believes that Pedro kept the powder or packet, but does not know whether he used it or not. Pedro informed Raoji that he had received money from Salim before he started for Goa.

Pedro in his deposition admits that he went to Nausari, and that Salim urged him to go to the palace, but he denies ever having gone there, or having ever spoken to the Gaekwar. He admits that he asked Salim a short time before he went to Goa for money for his expenses by the way, and that Salim gave him 60 Baroda rupees, saying that the Gaekwar had sent them for the expenses of his journey. He also admits having told Raoji that he had received the Rupees 60, although he says he was not intimate with him, and was only on speaking terms with him.

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Whether Pedro did go to the palace at all, or Raoji did accompany him in visits to the Gaekwar, or not, must remain uncertain. There is no corroboration whatever of Raoji's statements on this point.

29. Raoji's first visit to the Gaekwar with Nursu is stated by him to have occurred two or three days after the return from Nausari. This would be the 20th or 21st of May 1874. Karbhai, punkah-puller, accompanied them. Fifteen days after the return from Nausari Raoji received Rupees 300 from Nursu as his share of a present from the Gaekwar.

30. At the time Colonel Phayre had a boil on his forehead (September—October 1874), Raoji states that he again visited the Gaekwar with Nursu, and that the Gaekwar gave him a bottle containing a white liquid like water telling him to put it into Colonel Phayre's bathing or washing water. The mouth of the bottle was stopped with cotton and bees' wax. Raoji put it inside his drawers or trousers, which were tied round the waist with a string, the bottle being pressed against his body by the string, some of the liquid exuded, or was jerked out in walking, on to Raoji's stomach and swelling with a burning sensation was the result. Raoji took the bottle or phial with him to the Residency, and, in reply to Nursu's question, said that he had put its contents into Colonel Phayre's water. This, however, Raoji says was a lie, in order to stave off the importunity that was manifested by a sowar who came daily to ask if he had done the business. In point of fact he says he flung away the contents of the bottle because he thought they would inquire his master, Colonel Phayre. Raoji showed to Nursu the injury on his stomach. The bottle was kept under a box which was in the verandah of the Residency near the bench where the attendant messenger sat. The bottle was as long as Raoji's forefinger and thin.

The evidence of Dr. Gray, who was examined specially with reference to the injury on Raoji's stomach, is to the effect that the three marks visible thereon above the navel, where the drawer strings are tied, were caused either by caustic or burning from a hot iron; that arsenic is a caustic; and that arsenic in suspension might cause an injury, leaving such marks as those existing on Raoji's belly, if kept in contact with the skin for an hour, even though the surface of the skin were unbroken before the contact. Dr. Gray is of opinion that the injury on Raoji's person may have been caused in the way described by the witness, supposing arsenic to have been contained in the bottle. Our opinion on this episode of the bottle will be given when considering the evidence of Damodhur Punt.

31. Raoji describes another visit he paid one evening to the Gaekwar in the palace four or five months after receiving the Rupees 300 from Nursu. This would make the visit to fall in October or November 1874. Raoji thinks it was 15 or 20 days before the 9th of November. The room in which the interview with the Gaekwar is said to have been held is described by Raoji as His Highness' bath-room, the time 7 P.M., or somewhat later, and the persons present, Salim, Eshwunt Rao, Nursu, and Raoji. The following is Raoji's account of the conversation that passed:—"The Maharaja (Gaekwar is commonly referred to as the Maharaja, which is one of his titles) said to us—"The Saheb (meaning "Colonel Phayre) practises great op-"pression (*zulum*) on me. I will tell "you something; will you listen to it!" "Then I and the jemadar said, 'We will listen.' Then the Maharaja said, 'What is the Saheb in the habit of eating?' I then said, 'He does not eat anything in my presence, but he drinks juice (*ras*) sherbet.' Then the Maharaja said to us, 'If I give you something will you put it in (*dalna*)?' Then we said 'What will be the effect of it (*kya hoega*)?' Nursu it was who said this. Then the Maharaja said to us, 'I will send a packet by the hands of Salim, sowar.' I thereupon asked the Maharaja 'What will be the

effect of it?' (The interpreter, Mr. Nowrojee, says the word interpreted as packet may also mean powder, *puri*.) When I asked 'What substance is it' (or rather 'thing')? Then the Maharaja said, 'It is poison (*zahar*).' I then said to the Maharaja, 'If I put it in and if anything happens to the Saheb all of a sudden, what then?' The Maharaja said, 'It will not produce any immediate effect, but will produce an effect in the course of two or three months.' Then the Maharaja said to us, 'I will give you a present of a lakh each, if you will do this thing, and I will employ you, or give you service, and I will protect your children and family. Do not entertain any apprehensions.' I myself asked the Maharaja, 'In what manner shall I put this in?' Then the Maharaja said. 'Take a small bottle, put some water and the powder in it, shake it well, and put that in.' Then I asked the Maharaja 'If I put the powder thus, what will be the effect?' The Maharaja said, 'If without shaking it you put it in the juice, it will come to the top, therefore you should shake it before putting it in.' Then Salim, sowar, and Eshwunt Rao both said, 'It will be good for you if you do this job, do not have any apprehensions.' The Maharaja said, 'Make three powders of this, and finish them in three days.' At that time no powder was shown me; nothing was shown me then. The Maharaja said, 'I will send it to the jemadar's house by the hands of Salim or Eshwunt Rao.' I said 'very well.'"

32. The day following this interview Nursu brought and gave to Raoji a packet containing two powders, one white and the other rose-coloured; the quantity in each being, as shown to the Court by the witness, about a teaspoonful; the white powder, however, being rather more than the others. Raoji then made up these two powders into three, by dividing the rose-coloured powder into three portions, and adding a pinch of the white powder, which he believed to be arsenic, to each. There was thus a remnant of the white powder which Raoji put into the secret pocket of his belt in paper; and three compound powders he placed in another pocket of the belt. The belt is a band of thick cloth lined, encircling one shoulder and falling down to the hip on the other side. There it is joined, and a slide is sewn on for a sword. The waist band *(kammarband)* is tied over the belt, leaving the slide open underneath it. The three compound powders Raoji states he put into Colonel Phayre's sherbet in his office room, one at a time, on alternate days, having first shaken up the powder in water in the phial.

33. This is a convenient place to consider the matter of the discovery of the arsenic powder which has been referred to as the third packet examined by Dr. Gray.

Colonel Phayre has shown that he put Raoji under arrest on suspicion on the evening of the 9th of November, and Raoji states that he was released on the 11th, but was not allowed to resume duty, and went to his house. Raoji also states that on the morning of the 9th of November before he was arrested he was suspended, and that he put his belt of office in the office room occupied by Colonel Phayre at the Residency. Mr. Boevey, who was Assistant Resident at the time, shows, however, that Raoji hung up the belt, when he was deprived of it, on a peg in the room adjoining Colonel Phyare's office, and this, no doubt, is the correct statement.

Raoji was arrested by the Police on the 22nd of December 1874, their suspicions having been directed against him by information they had obtained of the large expenditure, with reference to his means, that he had been incurring in the town. On the 24th, 25th and 26th of December the statements of Raoji were recorded by Mr. Souter, and on the 25th, Akbar Ali, head of the Detective Police of Bombay, asked Raoji where he kept the powders he had brought from the palace. Raoji replied that he used to put them in his belt, which was then with Bhudar, who had been appointed to succeed him. Bhudar was at once sent

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for, and came to the room in the Residency where the Police were carrying on their investigation under Mr. Souter, who was also living there, and took off the belt which he was wearing, and handed it to Akbar Ali. Mr. Souter was at that time dressing. Akbar Ali at once examined the belt, and when his finger came in contact with a bit of paper inside the pocket, he called to Mr. Souter, who was in the adjoining room, and in Mr. Souter's presence the packet of arsenic and a piece of thread were found. It is clear from the evidence of Raoji, Akbar Ali, Bhudar, and Mr. Souter that Raoji had forgotten all about this powder, and that it was not until it was found that he recollected the circumstance. There appears to be no reason whatever for suspecting any foul play on the part of the police in connection with this discovery, which certainly corroborates Raoji's statement in regard to his treatment of the two powders. Raoji explains that he knew the white powder to be arsenic, and that he put only a little of it into each of the rose coloured powders for fear lest the action of the prison should be too rapid.

33*a*. We now come to Raoji's last visit to the Gaekwar, which he states to have been made on Friday night (the 6th of November 1874) with Nursu, in consequence of a message brought by Salim. He first went to Eshwunt Rao's house, and thence proceeded to the palace with Eshwunt Rao, Salim, and Nursu, who were all present with Raoji at the interview with the Gaekwar. The room in which the interview is said to have been held is the "bath-room." The Gaekwar abused Raoji for having done nothing, on which Raoji replied that he had done it, and could not account for the absence of the result. The Gaekwar said he would give him something else to put in. As Raoji was leaving, Salim put something into the jemadar's hand, which he (Raoji) did not see. Next day (Saturday, November, the 7th) Nursu gave Raoji a dark grey powder in a piece of paper. On Sunday, the 8th, Raoji did not go to the Residency, but he went at 6-30 A. M., on Monday, the 9th, and put the whole of the powder into Colonel Phayre's glass of sherbet, having first shaken it up with water in the phial. Raoji says that it was two days before he got this last powder that Pedro received the powder from the Gaekwar (at the last visit he paid to the Gaekwar with Raoji), so that Pedro must have received his powder, if Raoji speak the truth, on the 5th of November. Raoji explained that he gave the whole of the last powder in one dose, as it was small in quantity, and he did not think it would take effect at once, and moreover, he was urged to be quick.

34. We now come to the evidence of Nursu. Raoji appears before the Commission as a tainted witness, a principal in a capital offence, under promise of pardon conditional on his speaking the truth. Nursu, on the other hand, was distinctly informed by Sir Lewis Pelly that no pardon should be given to him, and his statement of confession, orally made before the Police and Sir Lewis Pelly on the 24th of December, was not recorded till the 26th idem, in order, as Sir Lewis Pelly explains, that he might have time to think over the matter, and that he might not be induced by any reason to make a statement which would not bear scrutiny. It is therefore necessary to look for facts corroborative of the general truth of Raoji's evidence. Nursu, with regard to the circumstances under which he appears seems to us to be a truthful witness and his manner impressed us favourably. Discrepancies between his and Raoji's evidence there undoubtedly are, and they are to be expected when men are relating occurrences which happened some considerable time before their recital. To show how witnesses on whose veracity no suspicion can rest may differ, it will suffice to refer to the accounts given by Mr. Souter and Sir Lewis Pelly of the reason why Nursu's statement was not recorded on the day that it was first made; Mr. Souter saying that he was too busy to take it down that day; Sir L. Pelly

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saying that it was because he ordered that time should be given to Nursu to think over the matter.

35. Nursu states that he was jemadar of peons at the Residency on Rs. 14 per mensem, having occupied that post for some 17 years, and been employed at the Residency for 32 or 34 years altogether. His house was in the city of Baroda. His usual time for going to the Residency in the morning was $7\frac{1}{2}$ or 8 o'clock, and he returned home at $6\frac{1}{2}$, 7, or 8 o'clock in the evening. He corroborates Raoji's statement in regard to the invitation which was made to him to visit the Gaekwar before or about the time the Commission of 1873 assembled, and his refusal on the plea of want of leisure. He corroborates in all essential particulars the first visit to the Gaekwar described by Raoji as having been made in his company after the Commission dispersed. Between this first visit and the trip to Nausari, Nursu alludes to only one visit with Raoji in the evening whereas Raoji alludes to four or five visits. When at Nausari, Nursu says he paid no visit to the Gaekwar, except in company with the Resident, and Raoji does not say that Nursu did visit the Gaekwar there with him. But Nursu relates a circumstance not mentioned by Raoji, and this is a fair instance of the absence of all convenience between Raoji and Nursu in the evidence they have given. Nursu says that when at Nausari, Raoji caused a present of Rupees 250 to be given to him (Nursu). Nursu not knowing what to do with the money there, Raoji left it with Salim, who was then going to Baroda. When Nursu returned home, he ascertained that the money had actually been paid on his account to his brother. There is no corroborative evidence of the truth of this story, which is not mentioned by Raoji, but there is no reason apparent for discrediting it, and the inference of course is that the money came from the Gaekwar.

36. Nursu describes his first visit after his return from Nausari. His description corresponds substantially with Raoji's account, but Nursu gives the date of the visit as the middle of June or July 1874, whereas Raoji would make it about the middle of May.

Native witnesses are so notoriously inaccurate in regard to time that discrepancies of this sort do not make their evidence untrustworthy on other points. Nursu says that Raoji, after some conversation with the Gaekwar, suggested that a present should be given in connection with His Highness' marriage (with Lakshmi Bai), and the Gaekwar promised that one should be given. Accordingly 10 or 15 days afterwards Salim brought Rs. 800 to Nursu, of which he gave Rs. 400 to Raoji (who paid Rs. 100 to Jagga) and took Rs. 400 for himself. Nursu gave Rs. 100 of his share to Salim, thus keeping Rs. 300 for himself. Jagga, however, says nothing of having received the Rs. 100 referred to by Nursu, and it is rather to be inferred that he did not receive them although he admits having been once to the palace in company with Raoji, Nursu, Eshwunt Rao, and Salim. Raoji, it will be remembered, acknowledged the receipt of Rs. 300 from Nursu.

37. Raoji states that Nursu was with him when he visited the Gaekwar at the time Colonel Phayre had a boil on his forehead, and received the bottle from the Gaekwar. But Nursu says he did not see the bottle given. He saw the bottle at the Residency, where Raoji explained that he shook up the poison in it with water, and he knows that it was kept under the box close to the peons' bench at the Residency.

38. Up to this time no allusion to poison had been made before Nursu, who now goes on to recite the circumstances of the last two visits to the Gaekwar, corresponding with Raoji's last two visits. One visit was paid 20 or 25 days before the 9th November, thus corresponding pretty nearly with the time stated by Raoji. The place of the visit is the ante-room alluded to above, of the Gaekwar's private room, or bath-room, according to Nursu's account, and not

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the bath-room as stated by Raoji. There seems to be no reason for believing that any of the visits were paid in the inner or bathroom. They were, we believe, all paid in the ante-room. Narsu says that Karbhai was with him, whereas Raoji does not mention Karbhai. Karbhai's evidence leaves it uncertain whether he was with Narsu and the rest on this occasion. It is not pretended by any one that he ever went into the Gaekwar's presence. The names of the persons present at this interview, as given by Narsu, correspond with those mentioned by Raoji, and the following extract from Narsu's evidence contains a description of what passed on the occasion corresponding essentially with Raoji's description:—

"The Maharaja had some talk with Raoji, I was present, heard and took part. The Maharaja said, 'The Saheb now becomes very angry and some endeavours should be made regarding it.' Eshwunt Rao said, 'It is the intention (*irada*) of the Maharaja. The Maharaja will give you something. You try to put it in (*dalna*).' The Maharaja said, 'Yes you should do something by which the thing should go into his stomach.' I said, 'With regard to the food, that does not lie in my province. I won't be able to do it.' Then Raoji said, 'If you like I will put it in the pummelo sherbet which he drinks.' The Maharaja said, 'Very well. try to do it.' The Maharaja said, 'I will send a packet (*puri*) which should be given to Raoji.' Eshwunt Rao and Salim said, 'With regard to what the Maharaja says, when he gives it to us, we will bring it. 'The Maharaja said. 'If the thing is done, it will be good for you.' Eshwunt Rao repeated the same thing. By the words 'It will be good for you' was meant, 'you will get your meat and drink well, so that you will not depend on service.' The Maharaja said this. Salim and Eshwunt Rao said the same thing. This interview lasted ten minutes, or a quarter of an hour. I don't remember the month. The occasion was 15 days or 20 days or 25 days or a month before Colonel Phayre discovered poison in his tumbler. At that interview no packet was given me. After it was over Salim gave me a packet the next day. Salim gave it me at my house. The packet was as long as my forefinger, made up in Ahmedabad paper. Salim said to me, 'This is the packet to which the Maharaja referred, give it to Raoji.' I did not open it, but kept it in my turban. When I came to the Residency at 8 o'clock I gave it to Raoji.' In his cross-examination Narsu explained that he joined in this conspiracy, thinking he should get money and advancement from the Gaekwar.

39. The date of the final visit with Raoji to the Gaekwar Narsu gives as the 2nd or 3rd of November. Raoji says it was the 6th. Narsu went as usual to Eshwunt Rao's house at 8 P.M., and the party consisting of Raoji, Narsu, Karbhai and Jagga proceeded to the palace, where they saw the Gaekwar in the ante-room as usual, introduced by Eshwunt Rao and Salim. Narsu gives the following account of what passed:—"The Maharaja said, 'You are a *lucha* (a loose fellow)' and used a coarse expression. 'You have done nothing as yet.' I said, 'Raoji knows that.' Raoji then said. 'As far as I am concerned, I did put it in.' Raoji added, 'What can I do if your medicine (*dwa*) is not good?' The Maharaja said to Raoji 'Very well, I will send another packet, and you do it properly, (*barabar karo*).' He added. 'Put it in well.' Raoji said, 'Very well.' Eshwunt Rao and the Maharaja both said,' It will be brought to you to-morrow by Salim. Give it to Raoji." Narsu then says that the following day Salim gave him a packet like the previous one near his house, and that he handed it over to Raoji at the Residency. Raoji says that as he was leaving the palace, Salim put something into the jemadar's hand, which he did not see. There is here a discrepancy which has not been cleared up.

40. On the 9th of November Narsu went to the Residency at 8 A.M., and after Dr. Seward had left, Raoji told him that he had put the poison in the

tumbler of sherbet, and that the 'Doctor Saheb' (meaning Dr. Seward) had taken it away. Narsu remained on duty at the Residency till he was arrested by the Police on the 23rd of December 1874.

41. It is now desirable to allude to the evidence of Raoji and Narsu in regard to letters sent by the former to the palace. Narsu states that during the rainy season of 1874 (June—September) he received 20 or 25 letters from Raoji containing the names of visitors and information for delivery to Salim, and that he did deliver them. They were not written on Monday and Thursday. Raoji says that he sent some letters of this kind; some of which he wrote himself, and one or two he got Jagga to write. Jagga corroborates this statement, and identifies one letter (Exhibit X as having been written by himself by direction of Raoji and Narsu. Exhibit X is a letter giving information about visits paid by certain persons to the Resident and the conversations that occurred. The letter was found in Salim's house, as proved on the evidence of Chagan Lall, Imam Ali, and Manibhai.

42. The evidence that has been produced leads to the belief that Raoji and Narsu had no opportunity of conversing after they were arrested, and that their evidence is the result of their individual experience. Raoji's statement had not been recorded when Narsu appeared before Sir Lewis Pelly and made his statement on the 24th of December, and it is, therefore, impossible that the Police could have instructed Narsu as to the particulars of the statement he was to make. Both these witnesses remained unshaken under cross-examination, and we believe that their evidence in the matters wherein they substantially agree is true. Narsu when adjured by Sir Dinkur Rao at the close of his evidence to tell the truth without fear, and as in the presence of God, declared that he had spoken the whole truth and that the offer of a pardon could not induce him to say anything else. We also observe that Narsu, after having had his statement and confession taken down by Mr. Souter on the 26th of December 1874, threw himself into a well in the Residency compound, being covered with shame at the part he had taken against a man whom both he and Raoji describe as a kind master. Narsu hesitated in Court to say that he had actually thrown himself into the well, and said that his head had become giddy from seeing some of his fellow servants and that he had fallen in; but having inspected the well, it is difficult to us to conceive that his fall into it could have been accidental, and there is good ground for the presumption that it was intentional on this part.

43. The evidence of Damodhur Punt must now be examined. He used to attend at the Gaekwar's palace daily from 7 A.M. till 10 P.M. and received a salary of Rs.200 per mensem. He was the Gaekwar's Private Secretary and states that he had all His Highness' private accounts under his control. In the dark half of the month Bhadrapad (September and October 1874) he was directed by the Gaekwar to get two tolas of arsenic for itch, and to write for it to the Foujdari department. There was an edict that arsenic could only be had in the Foujdari, and it could always be had under the Gaekwar's order. Accordingly Damodhur Punt wrote to the Foujdari officer the letter which has been produced (Exhibit Z). It bears date the 4th of October 1874, and directs that a pass be sent for two tolas of arsenic for "*medicine for a horse*". The son of Ganpat Rao Balwant, the city Foujdar, endorsed an order on this in his father's name to Dattatraya Ramchander on the 5th of October as follows:—"The Shrimant Shrikar Maharaj has ordered to give arsenic, tolas two, as above, on receiving the price; therefore, giving to the said person arsenic as above, take the price." Damodhur Punt states that he mentioned the horse because he was so directed by the Gaekwar. Hormusjee Wadia was the Huzoor Foujdar, and he informed Damodhar Punt that he would give the arsenic after asking the Gaekwar's permission. Damodhur Punt told

the Gaekwar of this, and the Gaekwar told him to get the arsenic somehow or other from Nurudin, a Borah living in the Baroda Camp, who had business with the Gaekwar's *Sillehkana*, (this word generally denotes an arsenal, but in Baroda it is used to indicate the State Medicine Store: possibly from the place having formerly been used as an arsenal), or dispensary. Damodhur Punt accordingly got a packet that was said to contain two tolas of arsenic from Nurudin, either that day or the next (the 5th or 6th October 1874), and gave it, by the Gaekwar's directions, to Salim shortly afterwards: the Gaekwar saying that Salim would convert it into medicine for itch and bring it. No arsenic was got from the Foujdari.

Dattatraya Ramchundar, employed in the Gaekwar's Foujdari Office, deposes that he received Exhibit Z, and that it remained in the Foujdari Office till it was sent for by the present head of that office three weeks previously to his giving his evidence; that no arsenic was given on that order; that an order had been in force for the past eighteen months that arsenic and other poisons were not to be given out except under an order from the Gaekwar; and that this document does not contain the Gaekwar's order, though it is stated in the endorsement that the Gaekwar had given sanction.

44. Damodhur Punt then goes on to state that about eight days after he got the arsenic, the Gaekwar ordered him to get one tola of diamonds and give them to Eshwunt Rao. He got a packet, said to contain diamonds from Nanaji Vithul, the clerk of the jewel department under him, and gave it, after asking the Gaekwar for instructions, and in accordance with those instructions, to Eshwunt Rao.

45. He further says that eight or four days after this, Gujaba, servant of Nana Khanvelkur, brother-in-law and hereditary minister of the Gaekwar, brought to him a small bottle containing some medicine. The Gaekwar had previously given Damodhur Punt orders to send (probably blister flies are meant) large ants, snakes, and the urine of a black horse to the Hakim (Gaekwar's doctor), and the contents of the bottle brought by Gujaba were a concoction made by the Hakim. The Gaekwar having desired Damodhur Punt to pour the stuff into another bottle, Damodhur Punt poured it into a smaller bottle of his own, about half a forefinger's length, which had contained *attar*, or essential oil of roses. Whether the witness used the words attar of roses, or merely attar which might mean any essential oil, is doubtful. The record has it attar of roses. The point is not very material, and it is clear to us that the small bottle referred to is not one of the usual otto of rose bottles known in Europe which contain only a few drops. Having poured the stuff into this smaller bottle, Damodhur Punt closed the mouth with cotton and bees' wax. The next day Damodhur Punt gave the bottle to Salim in accordance with the Gaekwar's verbal order given to him, and directed Salim to give the bottle to Raoji. Damodhur Punt is not very certain about the time he gave the bottle, but he is sure it was after August 1874, and he indicates the Dusserah (20th October) as the time about which he did so. He states that he knew the bottle was to be used to poison Colonel Phayre. We are unable to come to a satisfactory conclusion as to the precise manner in which Raoji became possessed of this bottle, but we are disposed to believe that he did, directly or indirectly, receive from the Maharaja a bottle containing some noxious liquid which was intended to be used to injure Colonel Phayre.

46. Subsequently Damodhur Punt got two more tolas of arsenic from Nurudin by the Gaekwar's orders, which he also gave to Salim.

47. He also, in obedience to the Gaekwar's orders, got from Nanaji Vithul a second tolah of diamonds. Nanaji Vithul delivered a packet to Damodhur Punt, which he said contained 3 mashas of diamond dust and 9 mashas of diamonds. This packet Damodhur Punt, by the Gaekwar's order, gave to Eshwunt

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Rao, who, in reply to a question put by Damodhur Punt, said that they were to be made into a powder and given to Colonel Phayre. This packet of diamonds was given to Eshwunt Rao five or seven days before the 9th of November 1874. The Gaekwar told Damodhur Punt that these diamonds were for a crown for the high priest of Akalkote.

48. It should here be observed that there is no evidence whatever to confirm Damodhur Punt's statement in regard to the procurement of the arsenic from Nurudin. That the Gaekwar desired to obtain arsenic may be held to be proved by the evidence of Damodhur Punt and by Exhibit Z. That arsenic was obtained by Damodhur Punt in the way he describes we consider highly probable. We are also of opinion that it is proved by the evidence of Raoji and Narsu that the poison used against Colonel Phayre came from Salim. That the arsenic which Damodhur Punt gave to Salim is the same that was used to poison Colonel Phayre is certainly probable. We are not prepared, however, in the absence of corroborative evidence of the truth of Damodhur Punt's statement to say that it is proved that the arsenic administered by Raoji was that, Damodhur Punt says, he obtained from Nurudin and gave to Salim.

49. In regard to the purchase of the diamonds, there is the following further evidence: Nanaji Vithul, the Darogah or chief officer of the Gaekwar's jewel department, deposes that shortly before the last Dusserah (20th of October 1874) he purchased by Damodhur Punt's orders 68 or 68½ ratties of flat rose diamonds, 1 to 4 diamonds per ratti, from Hemchund, son of Futtehchund. He instructed a clerk to prepare a memorandum (*yad*) of the purchase. Seven or eight days afterwards he purchased from Hemchund about 74 ratties weight of diamonds of the same kind by Damodhur Punt's orders, and an entry of their purchase was made on the same memorandum. Both lots of diamonds were given to Damodhur Punt as they were purchased, and Damodhur Punt told this witness that the diamonds were to be reduced to powder or ashes to be used as medicine. The total price was Rs. 6,003. Rs. 3,000 were paid by Nanaji Vithul to Hemchund as follows:—Rs. 2,000 were paid through Nanchund, Shroff of the Domala Mahal, out of two items aggregating Rs. 3,629-13-3 (Exhibits R1 and S1.) which were obtained by savings in the lighting department, and sale of gold coins presented as *nazarana* and credited to the Gaekwar's private account. Rs. 1,000 were paid by Nanaji Vithul himself. He says that the *yad* on which the purchases of these diamonds were entered was written by Atmaram, clerk, and that about the end of the Dewalee (the Dewalee began on 8th November and ended on the 11th November 1874, the principal day being the 9th) Damodhur Punt took it away, in consequence of which the diamonds do not appear in any of the accounts of the jewel-room.

Atmaram, clerk in the Gaekwar's State jewel-room under Nanaji Vithul, deposes that diamonds were bought from Hemchund about eight days before the last Dewalee a yad being prepared by Venaik Rao, son of Venkatesh, and kept by witness till after the report was known of Colonel Phayre having been poisoned, when Nanaji Vithul took it from him. This witness stated also that there was a large quantity of diamonds, loose as well as set, in the Gaekwar's jewel-room, and that at the time of the purchase of these diamonds the ornamentation of sword handle, scabbard, and jacket with small diamonds procured from the Gaekwar's jewel store was proceeding, there being a balance of such stones going on from year to year. He also stated in cross-examination that after Nanaji had taken away the *yad*, he (Atmaram) asked Hemchund whether he had received his diamonds back and he replied in the affirmative, Nanaji Vithul also having said at the time of taking away the *yad* that the diamonds were not to be purchased, and that he wished to return them.

50. Damodhur Punt gives the follow-

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ing account about the payment for these diamonds which he received from Nanaji Vithul. He received verbal orders from the Gaekwar to pay for them, and he directed Nanaji Vithul to disburse the money from funds which he had received on the Gaekwar's private account. Those funds he describes as the sum shown in Exhibits R1 and S1 above referred to. The total sum shown in those exhibits to have been credited to the private account is Rs. 3,629-13-3. The order for the payment to the jewellers for these diamonds is stated by Damodhur Punt to be Exhibit T1, dated the 31st Dec. 1874, which sets forth that Rs. 3,632-13-3 have been given by the Gaekwar for a feast to the Brahmins at Swami Narain's temple. Damodhur Punt states that this was a fictitious order, made to conceal the real purpose for which the money was required.

There can be no doubt that this is the case, because Rameshwar, mentioned in the order as the payee and provider of the feast, deposes that he did not receive the amount, and corroborates Damodhur Punt's statement that a receipt was always affixed to the order by the payee, by referring to a true order (Exhibit Y1), on which there is a receipt of his, whereas T1 has no such receipt. But* there is doubt where T1 is really the equivalent of the sums shown in R1 and S1, because, in the first place, the total of R1 and S1 is Rs. 3,629-13-3, whereas the total of T1 is Rs. 3,632-13-3; and, secondly, the date of T1 is the 31st of December 1874, whereas R1 is dated the 1st of January 1875. It is clear, however, that Nanaji Vithul did, as he admits, receive the amounts shown in R1 and S1, and it is also clear that T1 put into the hands or power of Damodhur Punt a sum of money which might be used for secret service. Indeed Damodhur Punt shows clearly that large sums were from time to time set aside as secret service money. Exhibits A1 to Q1, bearing date from the 24th of November 1873 to the 13th of October 1874, are fictitious orders for payment to Salim and Eshwunt Rao on account of goods alleged to have been purchased by them for the Gaekwar; and the proof of their fictitiousness, as explained by Damodhur Punt, is that they contain no details of the goods or of the names of the merchants from whom they were purchased. One difference between the orders A1 to Q1 and the order T1 is this, that the former bear in each case the acknowledgment of the payee, whereas T1 does not. It is, therefore, evident that T1 is not only fictitious in its purposes, but is also made so as to conceal the name of the person to whom payment was made, and it may be regarded as corroborating Damodhur Punt's statement that he directed Nanaji Vithul to pay for the diamonds. Damodhur Punt also said, and in this he is corroborated by Nanaji Vithul and Atmaram, that the diamonds were not credited or entered in the jewel accounts, as the Gaekwar said they were for medicine, and that only a yad or memorandum to that effect was prepared in the jewel department, which yad the Gaekwar, on being asked by Damodhur Punt about it after the attempt to poison Colonel Phayre on the 9th November had become known, directed should be destroyed. Damodhur Punt accordingly told Nanaji Vithul to remove the yad, which he did, and the amount was shown as paid to Swami Narain (T1.)

51. It now remains to examine the evidence of Hemchund in regard to these diamonds. This witness contradicted himself in the most violent way and no reliance can be placed on his evidence generally. His object seemed to be to deny all connection with the purchase of the diamonds. He admits that he took two packets of diamonds to Venaik Rao (brother-in-law of Nanaji Vithul and

* Subsequently added by Mr. P. S. Melvill, Commissioner:

The doubt expressed in paragraphed 50 in regard to the total of Exhibit T1 not agreeing with the totals of Exhibits R1 and S1 was caused by misreading a badly printed figure 6 in Exhibit R1 for a 3. In reality the total of T1 does agree with the totals of R1 and S1.

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employed in the Gaekwar's jewel department) on the 31st of October or 1st of November 1874, but he says that they were returned to him He denies ever having sold diamonds to Damdhur Punt, Nanaji Vithul, or Venaik Rao. He admits having received Rs. 2,000 from Nanaji Vithul on the 3rd of December 1874, and another 2,000 on the 2nd and 3rd of January 1875, but he states that these were on account of Hundi (bill of exchange) transactions. The Hundi transactions are entered in the name of Shivchund Khusalchund, Poona firm. Nanaji Vithul having purchased from that firm goods to the value of Rupees 7,000, and remitted Hundies to that amount procured from him (Hemchund) It is not at all established to our satisfaction that these payments of Rs. 2,000 each on the 3rd of December 1874, and the 2nd and 3rd of January 1875, were on account of the Hundi transactions. More probably does it appear that the payments were really for the diamonds as stated by Nanaji Vithul. Hemchund admits that the Rs. 2,000 paid on the 2nd and 3rd of January were received from the Karkoon of the Domala villages, as stated by Nanaji Vithul, and the date of payment is consistent with Nanaji Vithul's statement that the money was in part of the sum covered by the order No. TI, which bears date the first of January 1875. In regard to the Rs. 2,000 paid on the 3rd of December 1874, Nanaji Vithul deposes that he did pay that sum to Hemchund, but that he received back a Hundi and cash to the amount of Rs. 1,000 leaving the Rs. 1,000 net to be credited; and Hemchund admits that he did give to Venaik Rao, son of Venkatesh and brother-in-law of Nanaji Vithul, a Hundi for Rs. 750 on the 8th of December 1874, the premium on the Hundi being Rs. 155-10 and Rs. 94-6 having been paid in cash to Venaik Rao—total Rs. 1,000. It is, therefore, clear that this transaction, which left a net credit to Nanaji Vithul's account of Rs. 1,000, either had no connection with the payment for the diamonds, or that it was entered by Nanaji Vithul before, so far as is known, any funds had been placed in his hands with a view to paying for the diamonds. Hemchund's books afford but little assistance in corroborating Damodhur Punt's statement in regard to the purchase of the diamonds. Only one of these books (marked A 2) has been put in before us, and it has been tampered with. We find no grounds for considering that the police had anything to do with the tampering. There is an entry of the 7th and 8th of November 1874 of the purchase by Nanaji, on account of Damodhur Punt, of diamonds to the value of Rs. 6,270; and Hemchund admits that this entry is in his own hand-writing, but he urges that it was made under compulsion exercised by Gajanund, inspector of police, on the evening of the day he made his first statement before Mr. Souter (the 6th of February 1875). As stated above, we do not believe that Gajanund did exercise any such compulsion, because the entries are contradictory to some extent to the statement made by Hemchund before Mr. Souter, and it is not to be supposed that Gajanund, an astute man, would be guilty of a gross anachronism. But with advertence to the undoubted fact that this book has been altered, we prefer not to place any reliance on it. The only portion of Hemchund's evidence which has an important bearing on the case is that which relates to the taking of diamonds to the palace, and the payment of Rupees 3,000 net.

52. The conclusion we draw on the question of the purchase of the diamonds is that there is reason to believe that Damodhur Punt in October, and the beginning of November 1874, under directions from the Gaekwar, got diamonds from Nanaji Vithul, which he gave to Eshwunt Rao; that Nanaji bought them from Hemchund; and that the palace accounts and Hemchund's accounts have been falsified so as to conceal the purchase of the diamonds.

The natives of Baroda, in common with the natives of India generally, probably believe in the poisonous properties of pounded diamonds, although there is

apparently no well grounded reason for such a belief. The question naturally arises why Damodhur Punt did not get the diamonds from the Gaekwar's jewel-room, where there was a stock in hand. The only answer to this question that can be suggested is that it was probably thought easier to conceal a purchase of new diamonds than to take them from a store, the keeper of which would be bound to exhibit the transaction in his accounts.

53. Damodhur Punt was arrested on the evening of the day the Gaekwar was put into confinement (14th January 1875). He was confined for two days in the Senapati's Office at the place, and then he was brought to the Residency, where he was placed under a guard of European soldiers for 16 days, and afterwards under a police guard. He was present at the place when his papers there were sealed up after the Gaekwar's arrest. Being, he states, tired of the European guard, and thinking that he could not otherwise get out of confinement, Damodhur Punt made a confession to Mr. Richey, Assistant Resident, on the 29th and 30th of January 1875, and this confession was attested before Sir Lewis Pelly on the 2nd of February 1875. It is substantially the same as his evidence before the Commission, and it was made under a promise of pardon from Sir L. Pelly.

54. After his confession, his box containing the private papers of the Gaekwar was unsealed in his presence, and the exhibits (A 1 to Y 1) were found therein. He states that although before his arrest he used to hear from Salim what he had heard regarding the statements of Raoji and others, yet he never was informed of any of the details of Raoji and Narsu's confessions up to the time he made his own confession to Mr. Richey. It is impossible for us to say that this assertion should be accepted as true, but no evidence has been produced to contradict it. It is to be noticed that Damodhur Punt never went to the Residency in Colonel Phayre's time, and that he accompanied the Gaekwar on one occasion only, after Sir L. Pelly had assumed office at Baroda. He never saw Raoji at the palace, but he mentions that Salim said to the Gaekwar in his presence, at the time when Colonel Phayre was suffering from the boil in September, that he had induced Raoji to put a pinch of arsenic on the plaster used for the boil, and that this had caused a burning sensation, which led Colonel Phayre to remove the plaster.

He repeats several conversations he alleges he had with the Gaekwar, beginning with 9th of November, and ending with date of his arrest. These conversations, if they really occurred, and have been truly related, show that the Gaekwar was cognizant of the rumour which had spread on the 9th of November of the attempt having been made on that day to poison Colonel Phayre. There is one circumstance noticed in the conversation of the 9th of November which is corroborated by independent evidence, and, so far as it goes, it supports Damodhur Punt's account for these conversations. The Gaekwar, when returning from the Residency on the morning of the 9th of November, said to Damodhur Punt that Salim had run that morning to Raoji's house for the purpose of getting hold of any packets of the poison that might have remained and throwing them into the fire. Natha Jagga in charge of the conservancy of the Sadar Bazaar in the Baroda Camp where Raoji lived, saw Salim riding towards the Sadar Bazaar from the direction of the city on the 9th of November, and he saw him riding back towards the city about 5 minutes afterwards. Mahomed Ali Baksh, a Residency messenger, spoke to Salim at the Residency before Colonel Phayre returned from his walk that morning; and as he was coming back to the Residency from the Sadar Bazaar after leaving Dr. Seward's house, where he had taken the letter given to him by Colonel Phayre, (evidently alluding to the first letter Colonel Phayre wrote asking Dr. Seward to come to the Residency) he saw Salim riding back towards the city. Now this evidence of Natha

Jagga and Mahomed Ali Baksh, though not conclusive as to the fact that Salim went to Raoji's house on the morning of the 9th, shows that very probably he did so; and as Salim must have returned to the Gaekwar before His Highness paid his usual visit that morning to the Resident, the fact which the Gaekwar mentioned to Damodhur Punt, viz., that Salim had gone to Raoji's house to destroy any powders that might have remained is probably true, and it is difficult to conceive that Damodhur Punt could have fabricated the statement alleged to have been made to him by the Gaekwar.

Damodhur Punt also says that the Gaekwar in his presence repeatedly cautioned Salim and Eshwunt Rao not to say anything about the poisoning when alarm had been caused by the inquiry that was set on foot. These persons have not been called as witness in this investigation either for the prosecution or the defence.

55. Damodhur Punt describes the system of accounts prevailing in his (the private or *khangi*, department: and it will be sufficient here to mention that the first paper is the memorandum or *yad* which recites the order for payment, and is receipted by the payee. From the *yad* a daily journal is prepared, and from the daily journal a monthly account, and from this a yearly account. The *yad* and daily journal could easily be destroyed; but when once the monthly account had been made and incorporated in the yearly account, the difficulty of making away with all trace of any particular item would be greatly increased, and this was the reason assigned by Damodhur Punt in cross-examination for not destroying all the papers which in any way bear on the transactions which have resulted in this enquiry. An attempt was made to obliterate entries in four daily journals. (Exhibits U1, V1, WI, X1.) Damodhur Punt says that he caused Balwant Rao, clerk, to make these obliterations by pouring ink over that part in each which contains the name of Salim. Balwant Rao denies having made the obliterations, which are most clumsily done, though they have been effectual. Damodhur Punt states that he had the entries obliterated in order to hide Salim's share in these transactions and to screen the Gaekwar, and that he did so in obedience to the Gaekwar's orders. He admits now that it was unwise to do so, as the ink splotches attract attention to the papers. These papers were part of those under Damodhur Punt's control which were sealed up at the palace on the day the Gaekwar was arrested, and the evidence of Gujanand and Mr. Souter shows that when the papers were subsequently opened in Damodhur Punt's presence, they were in the same condition as that in which they were when produced before us. Lastly, Damodhur Punt states that no payment was made to Nurudin for the arsenic, as he was promised the business of the Gaekwar's Sillekhana (dispensary) in consideration of his having given it. Nurudin has been arrested, but he has not been put into the witness box.

56. The remaining evidence in the case is that of the ayah, Amina, and of those connected with her. She was in the service first of Mrs. Phayre, and accompanied that lady to Bombay in March 1874. She then remained in Bombay for a month, and, on returning to Baroda, entered the service of Mrs. Boevey, who was then residing at the Residency. She describes three visits she paid to the Gaekwar in the palace, it being the evening time on each occasion.

The first visit she paid with Faizu (stick in waiting), at the time the Commission of 1873 was coming to a close, and she states that she went at Faizu's solicitation. She and Faizu were introduced to the Gaekwar by Salim, whom they picked up on the way. The Gaekwar asked Amina whether she had heard Mrs. Phayre say anything about the Commission, and he directed her to send word by Salim or Eshwunt Rao if she did say anything. Faizu, although he denies having persuaded Amina, states that he did accompany her to the Gaekwar, Karbhai being the driver. He

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heard the conversation between the ayah and the Gaekwar. The Gaekwar asked the ayah to speak to Mrs. Phayre in his favour, as many persons were making representations about him, and the ayah replied that she could not make any solicitation to Mrs. Phayre. Karbhai deposes to having driven the ayah and Faizu to the palace on this occasion.

57. The second visit the ayah says she paid in June 1874 after the Gaekwar's return from Nausari, on the invitation of Salim and Karim (naik of the Residency peons). She was accompanied by Karim, and was joined by Salim, who took her and Karim to the Gaekwar, who asked her if Mrs. Boevey had said anything about the marriage at Nausari, Amina replied that she had heard nothing, but that when Mrs. Phayre returned from England some good thing would happen to the Gaekwar, as she and Colonel Phayre were favourably disposed towards him. The Gaekwar then told Karim to say something in his favour to Mr. Boevey. As Amina and Karim were taking their leave, the Gaekwar told Salim to give them something. Salim then told Karim to go the next day to Eshwunt Rao's house; and the next evening Karim came to Amina, saying that he had got Rs. 200, of which he gave her half the next morning. She understood the present to have reference to the Nausari marriage. Karim corroborates the ayah in regard to the visit and as to the general purport of the conversation. He says, however, that the Gaekwar asked Amina whether the Resident was angry with him on account of the marriage (alluding to the marriage with Lakshmi Bai.) He states that he went the next day to Eshwunt Rao's house, where Salim gave him Rs. 200 as a Nausari present, half being for himself and half for Amina to whom he gave Rs. 100. This witness contradicts the ayah about his having asked her to go, and he says that she took him.

Sundal was the carriage driver on this occasion, and he proves that he drove Amina and Karim to the palace.

58. The third visit the ayah says occurred in the month of Ramzan, and her husband, Abdulla, gives the time as the 15th or 18th of that month. The Ramzan in 1874 began on the 12th of October, so that this visit, according to Abdullah, would have occurred on the 27th or 30th of October. Amina said that Salim brought her a message that the Gaekwar wished to see her, and that she and her servant boy, Chotu, went in a carriage procured by her husband, and that she called for Salim on the way, and went up with him into the presence of the Gaekwar, with whom she held the following conversation:—"The Maharajah first asked me this—'Has the Madam Saheb been saying anything about the child?' The Madam Saheb was Mrs. Boevey, and the child was one born to the Maharaja. I said, 'The Madam Saheb has said nothing and I know nothing.' I then said, 'When the senior Madam Saheb (meaning Mra Phayre) comes something good will occur to you. She and Colonel Phayre both wish you well.' I then said to the Maharaja, 'When the Madam Saheb comes back something good will happen to you. Do you attend to what the Saheb says, Don't be afraid.' Then Salim said, 'Can any charm be used. Salim it was who first spoke of charm. Salim said, 'Should a charm be used will the Saheb's heard be turned?' but I did not exactly understand his meaning, I then said to Salim, as well as to the Maharaja, 'don't you use any *jadu* (arts of sorcery) for the Saheb, for they will have no effect on a Saheb.' The reason I gave for that was this, that the Saheb people had faith in God. Then Salim said to me, 'Should anything be given to a Saheb, what do you think the effect would be?' At this I felt very much alarmed, because before that I had heard something stated by two persons. I then said, 'Maharaja, I am going away.' I don't see the Maharaja here now; if he were here, he would corroborate me. Then Salim, addressing me, said, 'Hear what the Maharaja will tell you, and if you attend to him, you will have enough to live on for the rest of your life.' Salim then said to me, 'your

husband will also get employment, and you too will not have to serve any more.' I said in return to Salim, 'I have not been starving all this time back. I have spent all my life hitherto, serving the English.' Just then as I was about to go away, I said to the Maharaja, 'Don't you listen to what any body may tell you to do to the Saheb; for if anything injurious should happen to the Saheb, you will be ruined.' Then it seemed to me that the Maharaja got angry at this, because he said to Salim, 'Take the ayah away.' I and Salim then went downstairs to the place where the *gari* had stopped."

It will be recollected that Lakshmi Bai's son was born on the 16th of October 1874. The next time Salim came to the Residency, he told Amina that he had placed Rs. 50 under her cot, and there she found them. Chotu corroborates the Ayah in regard to going to the palace with her on this occasion, and so does Daud, the driver of the carriage, who states the date of the visit to have been two or four days before last Dewalee. The Dewalee of 1874 fell on the 9th of November..

59. Abdulla, husband of Amina, states that Salim used to go to Faizu's room in the Residency premises to drink water; he was informed by his wife of the first and second visits, and was aware of her having received the Rs. 100, and he recites the substance of her conversation with the Gaekwar on the third visit as told to him by her. He knew that his wife got Rs. 50 after the third visit. He received a letter from Amina when she was at Bombay, and he was at Baroda, in which there was an enclosure for the Gaekwar.

60. There were several letters (Exhibits A, B, C, D,) put in that passed between Amina and Abdulla when they were residing in different places in 1874. Allusions are made in all of them to Salim and Eshwunt Rao, on matters connected with the Baroda State. In letter D. dated the 29th of March 1874, written for Amina to Abdulla, the addressee is asked whether he received that enclosure contained in Amina's preceding letter. Amina, Abdulla, and Abdul Rahman [*alias* Rahim Saheb], the writer of the letters for Amina, depose that this enclosure was a letter to the Gaekwar. Abdulla states that he gave the letter back to Amina on his meeting her at Bombay on his way to Mahableshwar, and there is no reason for doubting that Amina did write such a letter, the contents of which Abdul Rahman describes from memory as being a request to the Gaekwar for money, and a statement that there had been a dinner at the Governor's at Bombay where Amina had "made enquiries," ending with the words "do not be apprehensive." This letter to the Gaekwar is not forthcoming, but it is clear that it was never delivered to him. It is to be noted that Colonel Phayre deposes that what be Bombay in March 1874 he did go to launch with the Governor.

61. We believe that Amina did pay the three visits above related, and that conversations of the character and to the general effect deposed to by her did take place between her and the Gaekwar.

62. When the case for the prosecution had been closed, a written statement [Exhibit No. 5] by the Gaekwar was put in by his counsel. No witnesses were called on behalf of the Gaekwar, nor were any questions put to His Highness before the Commission. The important part of the statement is as follows:—"I never had, nor have I now, any personal enmity towards Colonel Phayre. It is true that I and my Ministers were convinced that, owing to the position taken up by Colonel Phayre during his Residency, it would be impossible satisfactorily to carry out the reforms I had instituted, and was endeavouring to complete, in deference to the authoritative advice conveyed to me in the khureeta of the 25th of July 1874, consequent upon the report of the Commission of 1873. Acting on this conviction, and after a long and anxious deliberation with my Ministers, Messieurs Dadabhoy Nowrojee, Bala Mungesh Wagle, Hormusjee Ardasir Wadia, Kazi Shahabu-

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deen and others, I caused the khureeta of the 2nd of November 1874 to be despatched to His Excellency the Governor-General through Colonel Phayre, and, notwithstanding his remonstrances, feeling assured that when the true state of affairs was placed before His Excellency the Viceroy my appeal would be successful. This conviction was shared by all my Ministers, and was strengthened by our knowledge of the severe censure which had been passed on Colonel Phayre by the Bombay Government. The removal of Colonel Phayre on the 25th of November 1874 shows that our judgment was not erroneous. Thus, neither personal nor political motives existed to induce me to attempt the crime with which I am charged, and I solemnly declare that I never personally, or through any agent, procured, or asked the procurement of any poison whatsoever for the purpose of attempting the life of Colonel Phayre; that I never personally, or through any agent, directed any such attempt to be made; and I declare that the whole of the evidence of the ayah, Amina, of Raoji, Narsu, and Damodhur Trimbuck on this point is absolutely untrue. I declare that I never personally directed any of the Residency servants to act as spies on the Resident, or report to me what was going on at the Residency nor did I ever offer or cause to be paid any money to them for such purposes. I say nothing as to the presents that may perhaps have been made to servants of the Residency on festive occasions, such as marriage and the like. Information on trifling matters going on both at the Residency or at my own Palace may have been mutually communicated, but I did not personally hold any intercourse with those servants for this purpose, nor am I personally cognizant of any payments for the same having been made, nor did I authorize any measures by which secrets of the Residency should be conveyed to me.

63. We have now given a summary of all the evidence that it was necessary to give for a comprehension of the case. Other portions of the evidence will be alluded to in the general remarks which we now proceed to offer.

64. We have stated our belief that poison was put into Colonel Phayre's glass of sherbet on the 9th of November 1874, and we no doubt that it was so put with the intention of causing Colonel Phayre's death. We are further of opinion that there is good ground for the belief that previous attempts were made to poison Colonel Phayre between the latter end of September and the 9th of November; some of them being made by Raoji when he administered the three compound powders, and, had he not had a fear of putting in the full doses of arsenic, the probability is that Colonel Phayre would then have become seriously ill, even if his life had not been destroyed.

65. We have also stated our belief that the poison was put into the sherbet on the 9th November by Raoji, acting in concert with Narsu, though Narsu was not actually present at the time the poison was mixed. We consider that Raoji and Narsu had no personal motive for wishing to injure their master by these attempts, and that they were instigated by some other person to make them, and it is our belief that the Gaekwar Mulharrao was the person who so instigated them. The evidence of Raoji, Narsu, and Damodhur Punt appears to us to prove this. The compound powders first administered by Raoji contained arsenic as one of the ingredients: the powder administered on the 9th of November contained arsenic and diamond dust, or pounded diamonds.

66. The motive that actuated the Gaekwar to give the poison was a strong feeling of hostility towards Colonel Phayre and a determination to get him remove. The khureeta (letter exhibit No. 1) of the 2nd November 1874, written by Mr. Dadabhoy Nowrojee, the Gaekwar's Minister, in the name of the Gaekwar to the Viceroy, abundantly shows the strong feeling which the Gaekwar entered against Colonel Phayre.—"It had occurred to me.....

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whether I should not solicit your Excellency's attention to the position which the present Resident, Colonel Phayre, had all along taken up towards me, and to submit for your Excellency's consideration whether with the want of sympathy which existed between us I could expect an unbiassed and fair treatment at his hands in future." It then alludes to the "more determined and active opposition towards me and my administration than before," and proceeds to give an account of two instances in which Colonel Phayre's conduct is criticised.

"These two instances which I have taken as representative ones can hardly give an idea of the harassing and vexatious treatment I am at present receiving at the Resident's hands.

"This attitude on the part of the British Representative has naturally become a source of serious anxiety to me, especially as in such times persons are not wanting who for their private ends take advantage of this state of things to misrepresent me, and to instigate continuous resistance to my autority among my subjects. The result will be a great loss of revenue this year, and a continuance of the unsettled state of the minds of the people. How seriously this state of affairs must embarrass and obstruct me in my intended reforms it is not difficult to conceive. Your Excellency knows well the extent and nature of the work before me, and I owe it to myself and those whom I have engaged for that work to submit how hopeless any efforts on my part would be if Colonel Phayre were to continue here as representative of the Paramount Power, with his uncompromising bias against me and my officials.

"I beg it to be understood that I do not impute other than conscientious motives to Colonel Phayre. But he is too far committed to a distinct line of policy, and to certain extreme views and opinions, and he naturally feels himself bound to support all and everything he has hitherto said or done."

67. In reply to this letter, the Viceroy deemed it unnecessary to discuss the reasons given by His Highness for "desiring a change in the Baroda Residency;" but "after a careful consideration of the circumstances that have taken place, and, moreover, in pursuance of the determination of the Government of India to afford your Highness every opportunity of inaugurating a new system of administration with success." His Excellency [Letter of 25th of November 1874] communicated to the Gaekwar his determination to appoint Colonel Sir Lewis Pelly, K.C.S.I., to the Agent at Baroda in place of Colonel Phayre.

68. It is perhaps unnecessary to show by any further reference to the evidence on the record of this enquiry that the Gaekwar entertained strong feelings of hostility to Colonel Phayre. It is true that the Gaekwar, when spoken to by Colonel Phayre about the khureeta of the 2nd November, stated that Mr. Dadabhoy Nowrojee, the Minister had written it, and that he (the Minister) was responsible for it. This, it is clear, was a subterfuge, and as explained by Colonel Phayre to the Gaekwar, the object of allowing His Highness to select his own Minister was that he himself might be responsible for all communications sent to the Viceroy or the Bombay Government. Moreover the Gaekwar in the written statement which he has put in before us admits that he did cause the khureeta to be despatched. The absence of Colonel Phayre from the Gaekwar's nuptial ceremonies at Nausari albeit in accordance with the orders on the Government of India must have been displeasing to the Gaekwar. His allusion to the subject in his conversation with Amina can bear no other construction than that he was, to say the least, anxious on the subject of the marriage, and it cannot be doubted that his feelings on this head must have been intensified after the birth of the child.

69. It is difficult to distinguish political from personal dislike in the mind of the Gaekwar towards Colonel Phayre. There has been nothing elicited in this enquiry to show that there was any personal discourtesy exhibited by Colonel

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Phayre to the Gaekwar. The hostility between Colonel Phayre and His Highness arose entirely, so far as we can see, from references of opinion in matter of State, there can be no doubt that the dislike entertained by the Geakwar was both political and personal, and we are unable to admit the correctness of his statement that he had no personal enmity towards Colonel Phayre.

70. The manner in which the communications opened by the Gaekwar with Raoji, Nursoo, and the ayah, Amina, culminated in a plot to poison, Resident has been shown in the evidence which we have summarized. At first in the end of 1873 and beginning of 1874 the Gaekwar's object was apparently only to obtain information of what went on in the Residency in reference to the affairs of the Baroda State. He kept the strings entirely in his own hands, using as his agents Salim and Eshwunt Rao, and keeping even his Private Secretary, Damodhur Punt ignorant of what was going on. He dealt with Amina separately from Raoji and Nursoo. At last when he had become exasperated at the refusal of the Resident to acknowledge the marriage with Lakshmi Bai and the birth of her son, the idea of using poison was entertained and carried out. The inducement held out to Raoji and Nursoo was personal advancement and remuneration, of which they had received a considerable guarantee in the payments that had been made to them when as yet the ostensible object of their employment was simply to obtain information of what passed at the Residency. Raoji received in the end of 1873 Rs. 500 from the Gaekwar on the occasion of his (Raoji's) marriage. Subsequently, May or June 1874, he received a further sum of Rs. 300 as a present on the occasion of the Gaekwar's marriage, making a total sum of Rs. 800. Nursoo got Rs. 330 on the latter occasion as a present for the Nausari marriage, and Rs. 250 he had received without any specification of the cause, making a total of Rs. 550. These sums, even after allowing for the difference in value of Baroda and Queen's rupees, were absolutely large, considering the small rates of pay received by Raoji and Nursoo at the Residency, and the same remark applies to the Rs. 150 which the ayah received on two occasions in 1874, the first occasion being on account of the Gaekwar marriage, and the second, when Rs. 50 were given, being after the ayah's last visit in October 1874, and unconnected with any special event. We have no hesitation in expressing our opinion that these presents were given to these servants to induce them to give from time to time information about what passed at the Residency relating to the affairs of the Gaekwar, and that they not the ordinary presents which His Highness might be expected, in accordance with custom, to give on occasions of rejoicing to the servants of the Resident. We should consider payments made under such circumstances to be bribes, but we are unable to say that the Gaekwar regarded them in the same light.

71. But it may be asked, would the Gaekwar expect Raoji and Nursoo to commit a murder for a sum so incommensurate with the work to be done? To this, it may be replied that the Gaekwar had bound them to himself by the payments he has made, and by acts of visiting the palace and giving information which he had caused them to do, and that he had given a promise of large reward in the event of success. Raoji describes the promise as of a lakh of rupees to him, and a similar sum to Narsu. Narsu describes the promise as of a provision for life for themselves and their families. To poor men already committed to the Gaekwar, these promises doubtless appeared a sufficient inducement to get rid of Colonel Phayre, in, as they thought, a way that would not be instantaneous, and therefore likely to lead to their detection, but by a gradual and slow process.

72. The conduct of the Gaekwar on or after the 9th of November 1874, is not consistent with the view of his innocence. The evidence of Damodhur Punt leads to the belief that the Gaekwar

knew that the attempt to poison had been made when His Highness visited Colonel Phayre at 10 o'clock that morning. But even if he had not known of it then he must have known it before the evening of that day. Colonel Phayre and other witnesses have deposed that the fact of the poison having been given was commonly known in the Baroda Camp on the 9th of November. The city is not a mile from the camp. Salim had been at the Residency that morning, and been told py Raoji that the business had been done. It is not conceivable that Salim, who was in constant attendance on the Gaekwar, should have failed to inform his master of what had been done and yet we find the Gaekwar visiting Colonel Phayre on the following Thursday (12th November) for the first time' after Monday, the 9th of November, and then stating that he had heard the report of the attempt at poisoning on the previous day, the 11th, and it was not till the 14th November that the following (Exhibit H.) letter was written:—

"At a personal interview with you the day before yesterday, learnt from you the particulars about the attempt made by some bad man to poison you, for which I am very sorry. But it was the favor of God that his cruel design did not meet with success. If it becomes necessary to obtain my assistance in proving this criminal guilty, the same will be given. This was written for your information. Dated 14th November 1874."

73. The question naturally arises why should the Gaekwar, having sent the khureeta of the 2nd November 1874, have taken in hand the plan for getting rid of Colonel Phayre by poison? Supposing the khureeta to have been a *bona fide* endeavour to obtain a change of Residents, the only answer that can be given to the question is that the sending of the khureeta may have been suggested by Mr. Dadabhoy Nowrojee by whom it was prepared, and who was of course ignorant of the poisoning scheme. The Gaekwar, it may be presumed, would have at once approved of the suggestion.

74. The course that the Gaekwar might have been expected to take, had he been innocent of complicity, was to at once hasten to Colonel Phayre and express his concern, and make repeated inquiries after his health. He might have been expected to send a letter expressing his indignation at the occurrence, and his extreme regret that his hospitality had been violated by so vile an attempt in his own territory. His feelings of dislike to Colonel Phayre might have been expected to make him doubly solicitous to put himself clear with the British Government in the matter. Instead of this he holds back, and, after considerable delay, sends a cold formal letter. This conduct could hardly be explained on any other supposition than that of his having instigated the act of poisoning. We are compelled to regard the Gaekwar's denial of such investigation as being unworthy of credence.

75. With reference to the suggestion which has been thrown out that Damodhur Punt may have set on foot the plot for poisoning Colonel Phayre in order to hide his own delinquencies, we observe that there is no evidence to show that Damodhur Punt had been guilty of any act which he desired to conceal from the Gaekwar, or that he had any motive for desiring Colonel Phayre's death or removal from Baroda. It is not shown that Damodhur Punt had embezzled any of his master's property. His answer to the inquiry how he could justify himself with the Gaekwar in regard to the sums devoted to payments for secret service seems to us to be sufficient, *viz.*, that the receipt of the payee was fixed to the order for payment, although the order was so framed as to hide the real nature of the transaction. The only exception to this rule that has come to our notice is in the case of the Exhibit T1. Bnt even supposing that Damodhur Punt had been guilty of malversation it is unreasonable to suppose that he was not perfectly well aware that it was beyond the scope of Colonel Phayre's

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power to make any inquiry into the transactions which he conducted in his capacity of Private Secretary to the Gaekwar.

76. A future suggestion has been raised that Bhow Poonekur, who may be admitted to have been unfriendly to the Gaekwar got up the appearance of an attempt to poison Colonel Phayre in order to bring the Gaekwar to trouble or to prevent the removal of Colonel Phayre.

This suggestion might have been deserving of some consideration had the attempt been a feigned attempt: but in point of fact the attempt was made with every intention of its being successful and it was only the accident of Colonel Phayre failing to drink the whole of the sherbut on the 9th of November that prevented a fatal result.

77. Regarding the case from every point of view, we are unable to find any sufficient reason which would justify our declaring the Gaekwar not guilty of the offence imputed to him.

78. The Maharajas of Gwalior and Jeypoor and Raja Sir Dinkur Rao do not concur in the view we have taken of this case. We have considered the reasons for their opinions as contained in the separate reports which each of those members of the Commission has rendered. We believe that the evidence, after making every responsible allowance on the score of the character of the witness, proves—

1st.—That an attempt to poison Colonel Phayre was made by persons instigated thereto by Mulharrao, Gaekwar.

2nd.—That the said Mulharrao, Gaekwar, did by his agents and in person hold secret communications with some of the servants employed by Colonel Phayre, the Resident at Baroda, or attached to the Residency.

3rd.—That the said Mulharrao, Gaekwar, caused monies to be given to some of those servants.

4th.—That his purpose in holding such communications and causing such monies to be given were,—*1st*, to obtain information of what passed at the Residency relating to himself and the affairs of his State; and, *2nd*, to cause injury to Colonel Phayre by means of poison.

BOMBAY, *March 31, 1875.*

R. COUCH
R. J. MEADE.
P. S. MELVILL.

OPINIONS OF THE NATIVE MEMBERS OF THE COMMISSION.

OPINION OF HIS HIGHNESS THE MAHARAJA JEEAJEE RAO SCINDIA ALIJAH BAHADOOR, G.C.S.I., IN THE CASE OF THE MAHARAJA MULHARRAO, GAEKWAR OF BARODA.

As to the attempt at poisoning, from the whole case as it came before me, as far as my judgment and belief go, I am not convinced that the charge is proved against Mulharrao.

There appears to me no sufficient proof of the purchase of diamonds, arsenic, or copper, or document, signed by the Gaekwar for the payment of monies, for the above purposes, but Damodhur Punt's statement. Nor, indeed, is there any paper whatsoever, signed by the Gaekwar, involving him in this matter.

Out of a large number of persons corconnected with this case, only three witnesses,—Raoji, Nursu, and Damodhur Punt,—have given their evidence in reference to the above charge. All these widely differ in their statements and the reasons are given in the proceedings. How could they be considered trustworthy? The evidence of Pedro, the butler, and Abdulla, and the non-production of Salim, Yeshwunt Rao, Khanvelker, Gujaba, Nurudin, Borah and the Hakim, are in favour of the accused. Further, it is far from my belief, that the measures for poisoning should have continued so long a time, and in so open a manner.

Such an act is performed by one or two confidentials, and not by such a large number of people.

Now, when a small quantity of poison, once administered, could put in end to a man's life, there appears to be no reason why it was given and drank so repeatedly. I see no grounds to reject the chief

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arguments of the able gentleman, Serjeant Ballantine. It is a fact worthy of consideration that Mullarrao made no hesitation whatsoever in handing over Salim and Yeshwunt Rao at once to Sir Lewis Pelly, and expressed his desire to give him every assistance in his power.

As regards the communication with servants night or day, this is no matter of importance. These visits and requests for presents on marriage and other festive occasions, and the means to secure the favour of the Resident, as well as the procuring of information regarding each other, are matters in accordance with the practice of other Native Princes and persons who have connection with the Residency.

In conclusion, I remark that the chief points for enquiry are—

1*st*.—Attempt to poison.

2*nd*.—Tampering with the servants.

My opinion on the above subjects I place before you.

[*Vernacular signature of His Highness the Maharaja of Gwalior.*]

BOMBAY, *March 27, 1875*.

OPINION OF HIS HIGHNESS THE MAHARAJA OF JEYPOOR, G.C.S.I.

After carefully considering the nature of the evidence placed before the Commission in regard to the offences imputed against His Highness Mulharrao, Gaekwar of Baroda, I have the following remarks to submit.

The statements made by Amina, ayah, and several other Residency servants establish the fact that sums of money had actually been given to the ayah and to other servants of the Residency at different times, by order of His Highness the Gaekwar. These sums of money, however, do not appear to have been given out of any motives to tamper with the Residency servants for improper purposes, but simply as presents from the Gaekwar, and such as are generally given on occasions of marriage and national festivals.

With regard to the graver charge against the Gaekwar, Raoji, havildar, states that he did put poison into Colonel Phayre's tumbler of sherbet, as the Gaekwar had instigated him to do, and that a packet of poison was handed over to him by Nursu. Nursu says he had received the packet from Salim, the Gaekwar's sowar, and that he made over to Raoji, havildar. On the other hand, Damodhur Punt, the Gaekwar's so-called Private Secretary, states that the Maharaja had ordered him to procure arsenic and diamonds, and that he had instructions from His Highness to give the arsenic to Salim and the diamonds to Yeshwunt Rao, the Gaekwar's Jassoos. Salim and Yeshwunt Rao, who, according to Damodhur Punt's statement, are to be regarded as the connecting links between himself and Nursu in the above affair, were not produced before the Commission, and there is no means of ascertaining whether they made any statements on the subject before the Bombay Police. Further, there is no evidence as to their having conveyed packets of poison from Damodhur Punt to Nursu, excepting the bare assertions of the two accomplices—Damodhur and Nursu.

Damodhur Punt's statement, as to his having procured arsenic and diamonds, is not confirmed by any corroborative evidence. He says the diamonds were procured through Nanaji Vithul, Darogah of the Gaekwar's jewel department. Nanaji, it is stated, purchased them from Hemchund Futteychund, the jeweller; but Hemchund declared before the Commission that diamonds were not purchased of him, though he had submitted some for inspection. These, he says, were returned to him by Nanaji. Atmaram, who is a Karkoon in the Gaekwar's State jewel room, also stated before the Commission that the diamonds tendered by Hemchund were not approved, and therefore returned to him.

Nurudin, Borah, from whom arsenic is said to have been procured was not brought before the Commission. It was however admitted by Akbar Ali, Khan Bahadur, of the Bombay Police, in the

course of his cross-examination by Serjeant Ballantine, that the Borah was kept in confinement. It is therefore to be inferred that the Borah was far from confirming Damodhur Punt's statement with regard to the purchase of arsenic.

The several *yads*, or official memoranda, produced before the Commission out of the records of the private office under Damodhur Punt, do not show any specific sums of money having been paid for diamonds, or for poison of any kind. The sums mentioned in the *yads* were for giving feasts to Brahmins and other charitable and useful purposes. There is sufficient evidence also to prove that these sums were actually spent in such purposes.

Damodhur Punt also mentions a bottle containing some poisonous liquid, prepared of "large ants, snakes, and the urine of a black horse." This poisonous liquid, according to Damodhur's statement, was prepared by a Hakim, and sent to Damodhur's house through one Gujaba, servant of Khanvelkar, the Maharaja's brother-in-law. Neither the Hakim nor Gujaba was placed in the witness-box, so it is unknown what these men had to say. It appears from the above circumstances that there is hardly any statement of Damodhur Punt with regard to purchase of poisons that has any ground to stand upon, excepting Damodhur Punt's own evidence.

Copper is also mentioned as having been one of the poisonous ingredients put into Colonel Phayre's sherbet, but no clue whatever can be obtained as to who introduced it into the tumbler of sherbet, nor is it detected by the analyses of Doctors Seward and Gray.

The three witnesses, Damodhur Punt, Raoji, and Nursoo, whose testimony is considered to form the basis of this grave charge against the Gaekwar, are accomplices, and their evidence is not corroborated by a single respectable witness, nor is their evidence altogether free from suspicion of falsehood. Moreover, two of these accomplices made their statements under promise of pardon. In consideration of all these circumstances, I know not what degree of importance to attach to their evidence.

No documentary evidence, or evidence of a convincing nature was forthcoming from Damodhur Punt, notwithstanding his position as Private Secretary to the Gaekwar and the command he had over the records of the Maharaja's p[illegible]

Raoji and Nursoo, the o[illegible] complices, who state they [illegible] intercourse with the Maharaj[illegible] were asked by His Highness [illegible] Colonel Phayre, contradict e[illegible] in some important points. For [illegible] Raoji states that the Gaekwar [illegible] mised to give him, as well as to [illegible] a lakh of rupees each for p[illegible] Colonel Phayre. Nursoo, on th[illegible] hand, expresses utter ignorance [illegible] such promise having been made [illegible] Gaekwar. Another important [illegible] ment of Raoji is strongly contradicted by Pedro, and Raoji states that packets of poison were given to Pedro and others by the Maharaja, and, while Pedro stoutly denies what Raoji alleges, no clue can be obtained as to who the others were.

Besides the above circumstances, the facts elicited by Serjeant Ballantine in the course of cross-examination of the witnesses, as well as the features of the evidence pointed out by that gentleman, are, in my estimation, weighty and deserving of consideration.

For reasons stated above, I cannot persuade myself to believe that the Gaekwar was in any way implicated in the charge, notwithstanding the fact of poison having been found in Colonel Phayre's tumbler of sherbet, and the uncorroborated evidence of three accomplices—Raoji, Nursoo, and Damodhur Punt.

BOMBAY, RAM SING.
March 27th, 1875.

OPINION OF RAJA SIR DINKUR RAO, K.C.S.I., DATED BOMBAY, THE 26TH OF MARCH 1875.

As to the attempt at poisoning, from the whole case as it came on before me,

I am not convinced as far as my judgment and belief go, that the charge is proved against Maharaja Mulharrao. No proof of the purchase of diamonds, arsenic, or copper, or of the preparations of the poisons, no use of money (even of ... regard thereto, and no documents ... hand-writing of the Maharaja or papers about the poisons, ... his Private Secretary, Damodhur, became against him. Out ... number of persons connected ... case, only three witnesses, *viz.* ... Nursoo, and Damodhur Punt, ... their evidence in reference ... above charge. All these three ... their statements. Damodhur ... statement as to the purchase of ... ds is disproved by the evidence ... chund and Atmaram. He stated that he had not opened the packets to see the diamonds and arsenic. Damodhur's name has not been mentioned either by Raoji or Nursoo. It is stated by Damodhur Punt himself, that he made his statement owing to the trouble he suffered from his having remained in the custody of European soldiers for sixteeen days, his object being to get himself rid by making statements of some kind. The statements of Raoji and Colonel Phayre differ with regard to the putting in of the poison on the alleged dates. Raoji states, that he got the bottle from the Maharaja, while Damodhur states that he gave it to Salim. Again, Raoji says that he put the packets into his belt, while Damodhur deposes that, in order to burn the packets, Salim ran to Raoji's house, where Raoji also followed. Raoji further says that the Maharaja gave the packets to "Pedro, me, and others." Pedro has entirely denied to have received any packets. Who and how many men were the "others?" Raoji states that the Maharaja promised to pay a lakh of rupees each, while Nursoo denies this. From Raoji's statement it appears that he got the bottle about a month and a half before the 9th of November, whereas from what Nursoo has stated, it seems that the bottle was got only a few days before that date. Nursoo says "all the other servants caused Faizu's name to be written down in the depositions, and I did the same, though I knew it to be false. The three witnesses having become against their masters, and two of them having been granted a pardon, how could their statements be considered to be trustworthy? The evidence of Pedro, the butler, and Abdulla, the sherbet-maker (the Residency servants), and the non-production of Salim, Yeshwunt Rao, Khanvelkur, Gujaba, Narudin Borah, and the Hakim, are in favour of the accused. Further, it is far from belief that the measures for poisoning should have continued for a long time, and in so open a manner. Such an act is done by one or two confidentials, and not by a multitude, and when a small quantity of poison, if once administered, would put an end to a man's life, there appears to be no reason why it was given and drunk so repeatedly. These with other particulars are developed in the proceedings, and the chief arguments of the able gentleman, Serjeant Ballantine, are deserving of consideration.

As regards the communication with servants at night or day it is not an important matter. Their visits and requests for presents on festive and marriage occasions, &c., and the means used to secure the favour of the Resident, as well as the procuring of informations regarding each other (the Prince and the Resident), are matters in accordance with the practice of the other Native Princes and persons, who have connection with the Residency.

In conclusion, I beg to submit, that the chief points for enquiry being the attempt at poisoning and communication with servants, I have expressed my opinion on them as above.

DINKUR RAO,

C. U. AITCHISON,

Secy. to the Govt. of India.

THE KESARI CASE.

THE HONOURABLE BAL-GANGADHAR TILAK.

versus

THE QUEEN EMPRESS.

FIRST DAY'S PROCEEDINGS.

THE 8TH SEPTEMBER 1897.

The first stage in one of the most notable trials ever heard in the Bombay High Court, commenced on Wednesday morning at the Criminal Sessions, before the Honourable Mr. Strachey and a Special Jury. Since Mr. Bal-Gangadhar Tilak was committed early in August on a charge of inciting to sedition, the principal topic of discussion in the Bombay Presidency was the chances of the *guardian* member of the Legislative Council when on his trial before a judge and a jury. The engagement of Counsel, the Fund started for Mr. Tilak's Defence, the date fixed for the trial, the probable constitution of the jury and other cognate subjects were more eagerly canvassed in Bombay and the Presidency generally than even the position of affairs in the frontier. It was, therefore, no wonder that on the day fixed for the hearing, the High Court should from an early hour be besieged by a larger throng of people than the Criminal Sessions' Court could possibly hold and that the people gaining admittance should be only a small proportion of those who were desirous of being present. From half-past 9 A. M. persons who wished to be present at the trial, came to the Court previously, but found that side-entrances were all locked, while the main entrance to the Court, both on the East and West, was guarded by a party of European Police assisted by Native Policemen. Entrance was not allowed except to the *the law*, officers of the Court, persons having business there, and to the well-known citizens.

At 10 o'clock the rush of spectators was so great that the Court Officers found it difficult to preserve order except by turning them out or by sending people up into the gallery, where a party of Native Policemen preserved order. By 10-30 A. M. the Court platform was occupied by Members of the Legal Profession but there too was hardly room enough for a fraction of them. Mr. Starling the Clerk of the Crown was good enough to grant passes to the representatives of the press. His lordship took his seat on the Bench at 11 o'clock precisely, when the Clerk of the Crown required the accused Mr. Tilak to surrender, after reading the charges preferred against him, to which the Honourable Prisoner pleaded not guilty and in a loud and sonorous tone claimed to be tried.

The Hon'ble Mr. Basil-Lang the Advocate-General, with Messrs. J. Macpherson and Strangman, instructed by Mr. Nicholson, the public prosecutor appeared for the Crown. Messrs. Pugh of the Calcutta Bar and D. D. Davar of the Bombay, instructed by Messrs. Bhaishanker and Kang appeared for the Honourable Bal-Gangadhar Tilak.

The information against the accused, who was brought up in custody, was

laid by Mr. Mirza Abas Ali Baig, Oriental Translator to the Government. He declared that the passages in the *Kesari* in respect to which the charge was laid, were of an extremely inflamatory and objectionable character, calculated to excite feeling of disaffection to the Gov- [illegible] ablished by law in British [illegible]

[illegible] of empanelling the Special [illegible] ied time but eventually the [illegible] gentlemen were empanelled [illegible] pon the Special Jury.

[illegible] T. P. Thompson, Foreman:— [illegible] J. S. Sarson; J. Porter, W. [illegible] son, Anundrao N. Wasudeo, R. [illegible] be Babaji Kasinath, Pestonjie [illegible] ia and Mr. H. E. Proeter.

[illegible] pening address for the Crown:— [illegible] dvocate-General in opening the [illegible] r the Crown asked the Gentlemen of the Jury to dismiss from their minds whatever they might have heard or read regarding the case outside the Court, and to base their feelings exclusively on Evidence that would be placed before them. The case, he said, was one of great importance. The accused Tilak, the Editor and Proprietor of the Marhatti paper the *Kesari* printed in Poona, was charged under Section 124A of the Indian Penal Code. Mr. Lang then read the Section and commented upon the law of disaffection. The meaning of the word disaffection, he said, as they would all see in Dictionary, was dislike, ill-will &c. Johnson gave that definition. In Webster's Dictionary the meaning given, was dislike, disgust, unfriendliness, ill-will &c. The same explanation was given in almost every Dictionary and therefore, said Mr. Lang, in considering the articles, which would shortly be read to them, the question would be whether or not they were intended to excite a feeling of disaffection and ill-will or hostility towards Government established by law in British India. Proceedings had been taken under that Section once before, in the Calcutta High Court. In the *Bangabasi* case Mr. Jackson the Counsel for the defendant, contended that the words "disaffection" and "disapprobation" were synonymous words and had one and the same meaning. If that reasoning were sound, it would be impossible for any person to be convicted under Section 124A.

It is sufficient for the purposes of the Section that the words used are calculated to excite ill-will against the Government. The second question for you gentlemen of the jury, then, will be whether upon the evidence before you, you think that the articles circulated by the prisoner were calculated to create such feelings in the minds of their readers, and if so, whether they intended to create such feelings by their circulation in the mind of their readers. Now he submitted the explanation of the law given by the Chief Justice of Bengal, which was a very clear and proper explanation of Section 124A. That being the law which had to be applied in this case, he would now tell them what the articles were, in respect of which the prisoner was charged. The two articles in respect of which charges were based, appeared in the "*Kesari*" of the 15th June 1897. One was the "*Utterance of Shivaji*" and the other gave an account of what took place on the occasion of the celebration of his accession.

Shivaji's History:—It was hardly necessary for him to dwell at any length upon the details as to Shivaji's career. Undoubtedly they have all read of him, but to refresh their memory he would remind them that Shivaji lived in the 17th century. He was born in 1627 and he became an important Marhatta chieftain conquering a large portion of the Deccan and Konkan. At the time of his death the country under him was considerable indeed. Shivaji was a man of great ability and great courage. Now, in the celebration of the birth day of Shivaji, advantage had been taken to compare the state of the country now, to its condition under Shivaji's rule and to impress upon their countrymen how justifiable it would be for them to overthrow this Government. There could be no doubt that, that was the object in

view, as would be seen from an article he would read to them, which appeared in the paper sometime before the incriminating article, *viz.*, on May 4th.

The Advocate-General then read the official translation of the article. *Shri Ramjayanti* and *Shivajayanti*.

"We have many birth-day celebrations and jatras. In each town in each village and even, each hamlet, jatras we held, but they do not prove so useful to our (country) as in Western country. If difficulties, however trifling, come in the way of the (event) to be celebrated, (all) feeling of love for it disappears, and people keep running away and hiding themselves in confusion for the protection of evanescent bodies. The last *Ram Navami* is an instance in point.

Rumours, as usual, flew about thick even before (the day of) Ramjayanti (arrived) and they had also a partial effect on worshippers. Without having in the mind any fear (or awe) of that, which increases the duration of life (the people) (make) tireless exertions to save (their) wealth and their hollow reputation?

However *Ramnavami* was duly celebrated. On such occasions the townsmen in their (holiday) attire visit the temple (of the god) and return home after casting a hurried glance at the idol and sit talking over their fated troubles about the plague. None (cares to) hear the *Katha*, to repeat mentally the name of Rama, (or) to look at the Rama's image; the *Kathak* any how disposes of the affair to take (his) wages (while his) hearers are thinking about shoes and domestic affairs and some of them are amusing themselves. Even a child will be able to say that the Ramayan describes the death of Ravana at the hands of Ram, but no one thinks why (and) for whom it was, that Ram killed him and why the whole of that history was reduced to writing by the great and holy sage *Valmiki*. (And) would think about it? In the first place, those who hear the *Ramayan* are old folks who turn away from (their) duty.—The only thing they do is to repeat mentally (the name of) Ram with implicit faith. As young boys are endowed with capability, it is they who ought to hear such works as the *Ramayan* and *Bharat*.

"A thoughtful perusal of the life of Shivaji Moharaja from beginning to end will make it evident that it was he alone who made use of the story told in the *Ramayan* in all its details. To the best of my limited understanding the following is the story (of that epic). "During the rule of the King Ravan many Brahmins were harrassed, gods were persecuted and sacrifices were no longer performed. Ravan was, of course, doing what he wanted to do. The Brahmins did not pray to him or human beings, or any other thousand—mouthed for deliverence from his oppression for they were fiends after all. On one occasion all the kine and the Brahmins with fervent devotion and confidence appealed for protection to the Almighty God Himself. How could the merciful God remain patient any longer? He at once gave an assurance to the *kine* and the *Brahmins*?"

Lo? what a wonderful thing then took place? The all-pervading God assumed the Human form and played many a pastime to serve an example to human beings. To rescue *kine* and the *Brahmins* (from oppression), he not minding (his) affection for (his) father and to the great grief of (his) mother sufferred (the woes of) Excile in the forests for 14 years. He hardened his frame by living on bulbs and roots. During his residence in the forest, he contracted friendship with the monkeys and specially with Marutriaya. God in the form of man killed the most powerful Ravan. Similar in character was the fight between inexperienced and slenderly equipped Shri Shivaji Moharaj and the mighty Afzulkhan. God gets such great deeds performed at the hands of human beings themselves (and) therefore agreeably to the adage:—"If a man exerts himself, he will rise from the condition of man to the position of God." Man ought to do his duty. We are now reaping the fruits of our dereliction of duty in the past and in the present. Doesn't the above show that Shri Shivaji turned to good account (his) hearing of the Ramayan?

* * * *

Let that be. It is therefore (my) wish that all Hindus shall at the time of *Shivajanti* think over and cogitate upon the doings, the courage, the firm resolution and the ingenuity of Shivaji, and instead of supplicating the authorities for protection (they should refer all their complaints before God and lovingly implore Him and perseveringly ask *him* again to create among us a Shivaji similar to this. Will (the remembrance of all the following things, *viz.*, The present famine—the arrangements made regarding it—The deaths brought on by the politicality of Government. The epidemic fever—the oppressive measure (resorted to) for its abatement and effects produced by them, be kept alive by meditating (upon them?) Otherwise the people think themselves free, the moment the queen utters the formula of (these) four words (namely) "*Starve not in famine.*" But the number of those dying by the famine is going on increasing. (We) become pleased, when the people having already undergone miseries and the Gods suffered troubles in consequence of the *Zulum*, practised on account of the Epidemic fever, a Governor afterwards expresses his regret for those occurences? Hollow words did not please Shavaji. Let not, therefore, such things happen. Let this be known. *The Date* 2-5-97.

Your Obedient Servant,

GANESH.

"*Shivajie's utterances.*" "By annihilating the wicked I lightened the great weight of the terraquous glove. I delivered the country by establishing "Swarajya" (and) by saving religion. I betook myself to Heaven to shake off the great exhaustion which had come upon me. I was asleep, why then did you, my darlings awake me? I had planted upon this soil the virtues that may be likened to the *Kalpabriksha* of sublime policy based on a strong foundation, valour in the battle field like that of *Karna*, patriotism, genuine dauntlessness (and) unity, the best of all. Perhaps you now wish to show me the delicious fruits of these. Alack, what is this? I see a fort has crumbled down. Through (miss) fortune I get a broken stone to sit upon. Why does not my heart break like that this day? Alas! Alas! I now see with (my own) eyes the ruin of (my) country. Those forts of mine, to build which, I expended money like rain, to acquire which, fresh and fiery blood was split there, from which rallied forth, roaring like Lion through the ravines that have crumbled down. What a desolution is this! Foreigners are dragging out *Lakshmi* violently by the hand by (means of) persecution. Along with her, plenty has fled (and) after (that) health also. The wicked *Akabya* stalks with famine through the whole country. Relentless death moves about spreading Epidemic diseases.

Sloka (*Metre*) says ye, where are those splendid *Mavlas*, my second lives, who promptly shed their blood on the spot where my perspiration fell! They eat bread once (in a day), but not enough of that even! They toil through hard times by trying up their stomachs (to appease the pangs of hunger). Oh people! how do you tolerate in the *Kshetra* the incarceration of those good preceptors—those religious teachers of mine, the Brahmins whom I protected, (and) who, while they abided by their own religion, in times of peace, forsook the *darbha* in their hands for arms which they bore when occasion required! The cow—the foster-mother of babies when (their) mother leaves (them) behind,—the main stay of the agriculturists, the importer of strength to many people, which I worshipped as my mother and protected more than (my) life, is taken daily to the slaughter-house and ruthlessly slaughtered (there). "He himself came running exactly within my line of fireof (my) gun!" "I thought" (him to be) a bear! "Their spleens are daily enlarged!" How do the white men escape by urging these meaningless pleas! This great injustice seems to prevail in these days in the Tribunals of Justice! Could any man have dared to cast an improper glance at the wife of another? A thousand sharp swords (would have) leapt out of (their) scabbards instantly. Now, (however), opportunities are availed of in railway carriages, and women are dragged by the hand. You eunuchs! How do you brook this! Get that redressed! "He is mad, lift him up and send him at once on a pilgrimage." He is fond of pleasure. Deprive (him of his) powers, saying, that it would be for a time only. This is the way in which the royal families are being handled now. What misfortune has overtaken (the land)! How have all these kings become quite effiminate, like those on the chess—board! How can I bear to see this heart-rending sight? I turn (my) glance in another direction after telling (ie, having with you) a brief message. Give my compliments to my good friends, your Rulers over whose vast dominions the sun never sets. Tell them "How have you forgotten that old way of yours,—when with scales in hand you used to sell (your goods) in (your) warehouses?" As my expeditions in that directions were frequent, it was at that time possible (for me) to drive you back to (your own) country. The Hindus, however, being magnanimous by nature, I protected you. Have you not thus been laid under deep obligations? Make, then, your subjects, who are my own children, happy. It will be good for (your) reputation, if you show this debt

(of obligation).

(After reading the above extracts Mr. Lang proceeded to comment upon the italics) alluding to the references.

The second incriminating article:—After finishing his commentations on the first article, Mr. Lang proceeded to read extract from the article—"An account of Shivaji's celebration." The last paragraph read by Mr. Lang was as follows:—At the conclusion of the lecture, professor Bhanu said:—Every Hindu, every Marhatti, to whatever party he may belong, must rejoice at this (*Shivaji*) festival. We all are striving to regain our lost independence, and this terrible load is to be uplifted by us all in combination. It will never be proper to place obstacles in the way of any person, who with a true mind, follows the path of uplifting this burden in the manner he deems fit. Our mutual dissensions impede our progress greatly. If any one be crushing down the country from above, cut him off; but do not put impediments in the way of others. Let bygones be bygones; let us forget them and forgive one another for them.

* * * *

Have we not had enough of that strife, which would have the same value in the estimation of great men as a fight among [illegible] and cats? All occasions like the [illegible]nt festival, which (tend to) unite [illegible]hole country must be welcome. [illegible]ng. Professor Bhanu concluded [illegible].

[illegible]rds said Professor Jinsiwale! [illegible]lames Napolean for committ[illegible]ousand murders in Europe, [illegible]a[illegible]r is considered merciful [illegible]he needlessly committed slaughters in Gaul (France) at many times, why so violent an attack be made on Shri Shivaji Maharaja for killing one or two persons? &. After Mr. Jinsiwale, Mr Tilak commenced his presidental speech:—It is needless to make fresh historical researches in connection with the killing of Afzul Khan. Let us even assume, that Shivaji first planned and then executed the murder of Afzul Khan. Was this act of the Maharaja good or bad? This question which is to be considered, should not be viewed from the standpoint of even the Penal Code or even the *Smritis or Manu* and *Jagnabalka* or even the principle of morality laid down in the Western and Eastern Ethical Schools.

Shri Shivaji Maharaja did nothing with a view to fill the small void of his stomach, (*i. e.* from interested motives). With benevolent intentions he murdered Afzul Khan for the good of others. If thieves enter our house and we have not (sufficient) strength in our wrist to drive them out, we should without hesitation shut them up and burn (them) alive. *God has not conferred upon the Mlechhas the grant inscribed on a copper-plate of the kingdom of Hindustan.* The Maharaja strove to drive them away from the land of his birth; he did not thereby commit the sin of coveting what belonged to others. Do not circumscribe your vision like a frog in a well. Get out of the Penal Code, enter into the extremely high atmosphere of the *Shrimat Bhagabat Ghita* and (then) consider the actions of the great men, etc. etc.

What the report meant:—The Advocate-General then explained some allusions to the *Bharat* made in the articles. After reading some extracts he proceeded to give a description of the history of the murder of *Afzul Khan* by *Shivaji*. *The rule of the Mlechhas*:—Counsel then referred to the meaning of the "copper-plate" "the Poona murders." The article was published on the 15th or early in the morning of 23rd. Messrs. Rand and Ayerst were murdered at Poona, the deed being committed within a week of the publication of the articles. After referring to the correspondence that appeared in the *Times of India* in *June* last under the sig. of *Justice*, and Mr. Tilak's explanation in the *Kesari* of 22nd June, counsel proceeded to remark, that the explanation was not true, the word *Mlechhas* being applied to the foreign rulers of the present time. The articles were meant to cause disaffection against the British Rule. In order to prove the animus of the *Kesari* to the

British rule, the Advocate-General proposed to read several extracts from the paper.

Mr. Pugh objected to this course being adopted, saying that the charge was in respect of two particular articles alleged to have a tendency to cause disaffection. He contended that the correspondence in a paper could not be viewed in the same light as an article by the Editor and the *Times of India* which had published letters on the subject of *Shivaji* just as reasonably be brought up under the section at that rate. He submitted that for the purpose of showing animus, stray articles or stray contributions, purporting to be contributions of other people, could not be used one way or other. In the case of correspondence in Newspapers it was very desirable from commercial point of view, to give the views of some people other than of the Editor. They might favor one side or the other.

It was not right to single out certain articles from various contributions. *The judge* enquired where the counsel meant to say, that it was wrong to assume that the paper necessarily agreed with the correspondence. Mr. Pugh replied in the affirmative, and said that an Editor must admit contributions from commercial point of view. The Advocate-General submitted that these contributions were examined by the Editor. These were evidence against him for the purpose of showing animus and the motive which actuated him to give space to them. If they were commentaries upon matters with which the paper had no concern they would then have been valueless. In it, they found articles of of the same tendency, creating a bias against British rule. The judge said that it had always been held in libel cases, that extracts from the same paper were admissible in order to show animus, as to a certain extent of those who allowed them to be published and were responsible. The counsel might put in letters to the opposite *Primafacie* they bore upon the subject and were admissible.

The judge having thus overruled the objection of Mr. Pugh, the Advocate-General proceeded to read various extracts from the papers Edited by Mr. Tilak.

The first extract Mr. Lang read was "THE TEST OF SERVING (THE CAUSE OF THE) PUBLIC which appeared in *Mæhatta* in the columns 1 and 2 at page 2 of the issue of the paper dated Tuesday 6th April 1897, under the signature of "*Dasanudas*." The next extract Mr. Lang read was from the "Plague operations" appeared in the *Kesari* of the 4th May 1897. The next extract was from "Free thought" printed in paragraphs in the front page of the *Marhatta* of 23rd May, under the signature of "philosophy."

The next extracts Mr. Lang read were from the *Mayhatta* of the 30th May 1897 with the heading an "Arms Act for the Bombay state" and the "*Indian princes in London.*"

Concluding remarks:—The prosecution gave a notoriety to those articles which should be avoided as far as possible. The Government was not desirous of preventing free discussion in the Native Press. The next fact Mr. Lang referred to, was Mr. Tilak's being a member of the legislative council. The nomination he said, was made after the articles were published. As cases of similar nature did not depend upon oral evidence he asked the Jury to read the articles understand the Section 124A. The evidence of Mr. Baig was then taken the Government order for pr was tendered. Mr. Pugh ob the order, as it was vague cient alluding to the *Hydr* one in 3 Allahabad reports pa Mr. Lang in replying to the objection was about to tender the later order to which Mr. Pugh objected again, but the judge over-ruled the objection. Mr. Pugh asked the court to reserve a point on that matter. The case was then adjourned till the 9th September.

The Editorial Remarks:—The proceedings of the 1st day clearly show, that there was seldom any chance of Mr. Tilak'r acquittal. The "Truth"

remarks on Mr. Justice Strachey's explanation as follows:—

If this definition be correct, the law against seditions incitement in India is remarkable. Here in England we are accustomed freely to criticise the action of Government, and often in a mode which is the reverse of any disposition to support its measures; and we do this, not only in the Press, but in Parliament. Were the Indian law our law, most of Her Majesty's present Ministers would have been liable to imprisonment for showing this wicked disapprobation of the Government when Mr. Gladstone was its head and Mr. Morley was the Irish Secretary. Pushed to its full extent, in fact, the ruling of the Indian Judge, if applied to England, would result in each of the two parties in the State conveying to prison the Parliamentary minority and all journalits who might support them. It may be that such a state of law may be necessary in India to maintain our rule over the country. But I cannot help thinking that this is itself the condemnation of our scheme of rule, and that it would be far more honest to place the Indian Press, under a censorship, not allowing anything to appear, of which the Government might not approve, than to pretend that the Press there is free while fettering it with such a doctrine as the above.

SECOND DAY'S PROCEEDINGS.

The Court opened to-day exactly at eleven o'clock. The names of the accused and of the Jurors were called. Mr. Baig was again sworn. Mr. Pugh however proposed, with the consent of the Advocate-General, to put in documents at the stage. The following were then put in: A copy of the *Kesari* of the 15th December 1885, stating that Shivaji's tomb was in a dilapidated condition, and thanking Lord Reay for making a grant for the purpose of repairing it; a copy of the *Kesari* of the 23rd April 1895, giving a history of the movement and exhorting the people to hold meetings for the same purpose; a copy of the *Kesari* of the 30th April 1895, acknowledging receipt of two annas and asking for further subscriptions; a copy of the *Kesari* of the 4th June 1895, containing summaries of the movement and a report of a recent meeting held for the purpose of securing funds; a copy of the *Kesari* of the 14th April 1896, about the same subject, taking the people to task for not supporting the movement and praising Lord Sandhurst for giving permission to hold a meeting at Ragad; a copy of the *Kesari* of the 21st April 1896, containing a long review of Shivaji's life and descriptions of recent Ragad celebrations, Mr. Tilak declaring that such celebrations were countenanced by the Government; a copy of the *Times of India* of the 21st April 1894, noticing Mr. Karkeria's lecture on Afzul Khan's death; a copy of the *Times of India* of the 8th March 1896, containing "M. G's" letter controverting Mr. Karkeria's position; a copy of the *Times of India* of the 16th March 1896, containing Mr. Karkeria's reply to 'M. G's" letter; a copy of the *Times of India* of the 7th April 1896, containing "M. G's" rejoinder. Mr. Pugh then said that the movement was next carried to Poona, first in Mr. Bhanee's lecture in the Deccan College which was announced in the *Kesari* of the 24th March and that Mr. Bhanee's speech was reported in the "Deccan College Quarterly" for April. Professor Bain, who presided at this meeting, remarked that such discussion was unnessary, for Shivaji should not be judged by the standard of private morality, that he fought for the independence of his country, and that any crime was justifiable under the circumstances. Then were put in a copy of the *Times of India* of the 5th March 1897, in which "A. T. C." took the same view of Afzul Khan's murder, expressing admiration for Shivaji; a copy of the *Times of India* of the 8th July, containing Mr. Bhanee's letter, explaining the speech delivered at the Shivaji festival and contained in the incriminating article, maintaining his position on historical grounds and

stating that the concluding remarks referred to social, industrial, and political regeneration all along the line; a copy of the *Times of India* of the 30th June, in which Mr. Tilak's letter, explaining his position at journalist and private gentleman during the plague, and refuting the insinuation of the Editor and the correspondence, signed "Justice," about sedition; the letter of the Private Secretary to H. E. the Governor addressed to Mr. Tilak, in which Mr. Tilak's memo. about plague was acknowledged, and it was stated that it had been read with interest by the Governor; a copy of the *Mahratta* of the 4th April, giving an account of the deputation about plague matters.

His Lordship asked what could be the relevancy of the articles being put in. Mr. Pugh said that the object was to show how very impossible it was for a gentleman, co-operating with the Government in plague operations and incurring the displeasure of his countrymen to desire the overthrow of the Government.

Mr. Pugh then put in a copy of the *Kesari* of the 9th February, explaining Mr. Tilak's position about the famine policy; a copy of the *Kesari* of the 16th February, about the spread of the plague in Bombay and the western presidency and particularly the Poona regulations; a copy of the *Kesari* of the 9th March, explaining the theory of the spread and prevention of the plague, inculcating segregation on popular basis and approving the Government actions; a copy of the *Kesari* of the 16th March, referring to the Poona plague operations, especially to the employment of soldiers; a copy of the *Kesari* of the 8th May, referring to Mr. Rand's notice, stating that the plague had subsided and that the inspection by soldiers should cease; a copy of the *Kesari* of the 1st June, containing an article preparing the minds of the Poona public for the coming Shivaji celebration, headed "Hero-worship" in adaptation of Carlyle's book entitled the same. Then were put in the articles of the 8th, 15th, and 22nd June, on "Jubilee festivals," stating at length Mr. Tilak's views on Her Majesty the Queen and the extension of the British Empire and their rule in India. At this stage the Court adjourned for lunch.

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CROSS-EXAMINATION OF MR. BAIG.

When the Court re-assembled after lunch, at 1-45 P. M., Mr. Baig was recalled. Cross-examined, he said:—"Mr. Bhanee is a Professor in a State-Aided College. Mr. Bain is a Professor in a Government College. I usually send translations of papers in a day or two; sometimes in three or four days. I read "Justice's" letter after making a translation of the incriminating articles and while examining the *Kesari* of the 22nd June. "Justice" did not object to Professor Bhanee's speech."

At this stage the defence put in literal and free translations of Shivaji's utterances and portions of Mr. Bhanee's speech.

The witness continuing said that "dad" meant a representation of grievances Mr. Baig was cross-examined at length on this point and also on "sahile," which was translated as "tolerated," the defence contention being "endured" without the idea of showing a tendency to retaliate. Another point was that the official translation turned many exclamatory sentences into interrogatory tones, thus expressing anger while sorrow had been expressed in the original. Another point was about "oppressing down from above," the defence contending that there was no such implied meaning, expressing "from above down." It was not to be found in the original. It was a mere tautology. Mr. Baig cross-examined at length on the meaning of "Shwatantrya," which, he admitted, meant liberty, though again he said that it meant political independence also but only in reference to the context. Re-examined the witness said that "dadapane" meant "press," "bring down;" "chhalane" meant "persecute," "harass;" but that he got the meanfng "persecution" from an Anglo-Mahratti dictionary and not from a Mahratti-

English dictionary. "Dad lavine" which clearly meant "make representation of grievances," conveyed to Mr. Baig only "getting grievances redressed by force." If constitutional methods were meant the words should be "Dad Magunghya." The last few questions were addressed by His Lordship.

At this stage the case was adjourned.

THIRD DAY'S PROCEEDINGS.

Cross-Examination of Mr. Baig.

The Court assembled at 11 o'clock today. Before beginning regular work, Mr. Pugh complained of certain remarks made by the local *Times*, quoting authorities that such observations are contempt of Court, and instancing a similar rule passed in the *Bangabasi* case. The Judge warned the papers not to give opinions, not even to make suggestions, about evidence, and advised the jury not to take such remarks into their consideration.

Mr. Baig was cross-examined on the tense used in "God did not grant copperplate to the Mlechhas" Mr. Baig persisted that present tense is used and not the past in the sentences, preceding and following the above sentence he admitted that the past tense is used. Being re-examined, he gave another Marathi construction for the past tense. This led to further cross-examination; but the complicity of the question led His Lordship to decide that the accused should give an explanation in the whole matter to Judge. The witness said that "Gora', meant white man. For the "Mussalmans" Mahomedan was employed. "Swarajjya" meant one's our rule. "Chatun Kadha" means 'cut off,' meaning 'killing;' it may mean 'put aside' or 'separate;' but here clearly it means killing,' because the sentence is put in a most emphatic way. He was going to mention the opinion of Marathi scholars, but the Judge stopped him. The advice in the *Geeta*, inculcating the killing of even teacher, &c., he said, referred to any person, to gain an idea of country's independence. "Deshack Swatantrysa" ought to be used after this stage.

All documents mentioned in the Advocate-General's speech were put in by the prosecution.

Other Witnesses.

Then Palandiker was called to prove the publication of the paper in Bombay. Narayan, clerk, Aryabhusan Press, was called to prove Tilak as Proprietor of the *Kesari* and the *Marhatta*. Being cross-examined, he said he was an inhabitant of Poona, knew Marathi and Sanskrit, and was called a Shastri. There are two factions in Poona—the orthodox, and the reform. Tilak belongs to the orthodox and Bhanee to the reform party. Questions were put to the witness to show that "Swatantrya" is used in the sense of 'liberty' 'freedom' 'rights' &c, and Bhanee used that word in such sense. *Balbodha*, published by Oka, a Government servant, now a pensioner, widely read by boys, was put in. It contained articles on India's poverty and Shivaji's 'utterances,' similar to the incriminating articles. *Puspavatia*, issued by the Government, containing poetry on patriotism and containing similar sentiments, was also put in. The *Hitopadesh* verse, stating that discontented Brahmins and contented kings are lost, was also put in. The Judge, however, elicited further matter. Some think it cross-examination. Kolangde, the head printer, was next examined. He related the process of composition and printing.

At this stage the Court rose for lunch. It was strange that Editors of English dailies were provided with chairs on the dais near the bench.

After tiffin, Kolangde continued. He said that in Gokhale's absence, Bal did the Manager's work. Tilak was not in Poona during May and part of June. Bal's duty was not to examine proofs. Guider's evidence was formal. He searched the Press and found the documents produced in the case. Purdhit, clerk, post office, in cross-examination, stated that Tilak worked hard for the

Hindu Hospital and the Segregation kitchen. He spoke also about divisions among the Poona Hindus. He said that Tilak had co-operated with the Government. Datar merely proved the publication of the *Kesari*.

About Expert Evidence.

The defence having no evidence to offer, the Advocate-General, while going to address, was interrupted by the Judge who said that there was a conflict in regard to important words—some, very important. He would consider, after reading notes, if expert evidence was desirable. Mr. Pugh suggested that no Mahomedan experts should be called. The Judge said, if he called experts, they would be reliable and above any impeachment of partiality.

During the cross-examination of Mr. Baig by the Advocate-General about the correctness of the tense in the translation: "God has not conferred &c." Mr. Pugh rose and remarked to His Lordship: "My client is very anxious if your Lordship pleases to allow him to ask the witness some questions regarding the grammatical construction of that sentence." His Lordship:—"Can't he put the question through you Mr. Pugh?" Mr. Pugh:—The questions are of technical character." Judge:—If you can not understand the questions it is very difficult for me to understand or for the the Jury. Mr. Pugh:—It is as regards the words in grammar. Judge:—I shall settle the matter this way. I shall ask the accused at the time of his making his statement to give his own explanation; will that suit your purpose? Mr. Pugh:—That would suit the purpose of my client's too.

After the examination of the 7th witness Vishnu Jaganath Dattar by Mr. Lang for Mr. Pugh having objected to cross-examine him the Advocate-General Mr. Basil Lang said: these are all the witnesses for the prosecution my Lord. I now put in the statements made before the Magistrate by the accused Tilak on the 2nd August 1897.

[Here the copy of Mr. Tilak's sfatements before the Presidency Magistrate was produced by Mr. Lang.]

Mr. Tilak's Explanations.

Then the accused's statements before the Magistrate were read. Tilak, at the Judge's suggestion' gave explanations of disputed words and phrases, often contradicting Baig and always supporting the defence contention that the words used did not convey any sense of force; for example "Dadapane," (pressing down) has no physical meaning; "chhatuntakne" does not mean 'murder' but 'lettting severely alone;' "ditelen nalin" is not present tense but past tense, referring only to the Mahomedan in the contest. He quoted authorities supporting his contention. He then explained "Swatantrya" meaning 'liberty,' 'rights' quoting Manu and Yajnavalkya for authorities. He explained "Paranjpes Puran" as having bearing to Duryodhan's feeling. What are two distinct Sanskrit expressions, were translated as forming one sentence by the Translator. The word "Dad" excludes the idea of force. Tilak volunteered other explanations, if His Lordship desired.

Judge:—I am going to ask the accused Tilak as he wanted to explain some expressions. Mr. Pugh: some grammatical questions regarding the meaning of the word *dilele*.

Judge:—Tilak, I understand you want to give an explanation regarding the passage officially translated as God has not conferred upon the *mlechhana's* the grant inscribed upon a copper plate." What is your explanation? Mr. Tilak:—I have to offer an explanation regarding the tense of the verb used there. The sentence reads thus:—*Mlechhana Hindustanchya Rajyachen tamrapat, parmeswarane dilele nahin. Mlechhana* is the accusative of *mlechha Hindustanchya* is the adjectival form in the genitive case. *Rajyache* is in the genitive case, *Tamrapat* is the nominative of *nahi*. Parmeshwaranee is in the instrumental case and connected with causal of *dilelen*.

Dilelen is the past participle from *dene*. *Nahi* is a negative copula; a negative verb. Judge:—Is that all? Mr. Tilak:—The verb, *nahi* has no past tense in Marahati. Judge:—*Nahi* is not a verb at all. Mr. Tlak:—*Nahi* is not an adverb; it is a verb. Judge:—How do you translate it? Mr. Tilak:—*Nahi* means is not. It is a combined verb of *na* and *ahe* and I would translate the sentence as "it is not a fact that the *tamrapat* has given to the *mlechhans* by god." Judge: *Nahi* means "not." Mr. Tilak:—*Nahi* means "is not." Judge:—You mean that *nahi* simply means—nay standing by itself. Mr. Tilak: It doesn't convey any sense of time and that sense it conveyed by the participle and if Your Lordship wants any authority I have got them in Marhati grammars.

Judge:—Dile nahi or *dilelen nahi—dile* is the same *dilele*? Mr. Tilak:—Yes. Judge:—"I have not given" and I did not give" either expression is possible in Marhati? Mr. Tilak: That all depends on the context. We have the present perfect, positive form but none in the negative.

Judge:—I don't want to cross-examine you or put you any question I want you to explain the way in which you can express the meaning of "has not given:" You say it depends on context? Mr. Tilak: It has been suggested that this would mean *dile, nevete*. Mr. Pugh:—Please Your Lordship. Judge:—I shall try to make him hear me. Lordship's question:—I want to ask:—Mr. Tilak:—It is said that the proper translation is "God has not conferred &c." I want you to point out where it is incorrect. why it would be "God did not give &c." Mr. Tilak:—Just the sentence above this which has been translated here, the form used is the same. Mr. Pugh:—Read the sentence—"Shivaji did nothing." Judge to Mr. Tilak:—Is that all you want to say about that sentence about the *Mlechhas*? Mr. Tilak:—If Your Lordship wants I can give authorities.

Judge:—I don't want authority but if you may, you can give. Mr. Tilak:—My authorities are the grammar of Marhati language by Krishna Shastri Godbole which is in Marhati. Judge:—I can't read them. Mr. Tilak:—This was used by the Education Department. Judge:—Let the Interpreter read the passage you want to draw my attention to. Mr. Tilak: My other authorities are the grammar of the Marhati language by Dadoba Pandurang and an other—the standard Marhati grammar by Ram Chunder Vicajee. Judge:—Mr. Pugh you will have these authorities translated to-morrow? Mr. Pugh:—Yes My Lord! Judge:—What's the meaning of the word *Varun* to be gathered from the text. Mr. Tilak:—*Varun Khali dadpat asnet* means, to exalt oneself at the expense of another. It does not apply to physical pressure. *Varun Khali* simply means down. Similarly about Chhatun Kadha which is probably rendered by cut off, but is never used in the sense of killing. Judge:—What does it mean? Mr. Tilak:—It means cut, *Kapane*. Judge:—How do you explain the expression if it does not mean killing; what does it mean? Mr. Tilak:—Set aside, let severely alone—Candy's Dictionary is my authority. Candy says killing is *Katne* or *Kattal Karne*. Now for the expression *Varun Khali* it simply means "down." It is a colloqual phrase. Judge: There is nothing about pressing down. Mr. Tilak: There is nothing about killing. I referred to the social bickerings. It means set aside. I want to say something about the word *dad lawne* and the very word *dad* excludes an idea of force. *Dad* means representation of injury and *lavun qhya* is the causal form of lawful lawne. *Dad* is something like Relief in English. Judge:—You say that it means redress or relief. Do you say it necessarily implies redress by petition or representation? Mr. Tilak: It always implies that, it excludes the idea of redress by one's own effort. *Hitopodesh* and *Maherthi* have plenty of similar instance. If Your Lordship asks for further explanations I shall be glad to give it. That is all I have to say.

FOURTH DAY'S PROCEEDINGS.

The Advocate-General's Address.

The Court sat to-day at 11-7. His Lordship decided that no expert evidence should be called.

The Advocate-General, Mr. Lang, began summing up. He asked the jury to dismiss all that they might have heard or read outside, and told them that he did not mean to go through the articles put in. Counsel then referred to Mr. Tilak whose offence was the graver. The opening or the establishing of a plague hospital was no evidence of loyalty. It was, after all, a paying hospital. Mr. Lang continued that the accused had considerable influence, while the *Kesari* had a large circulation. He explained what sedition was, and did not press the consideration of the selected passages, as their meaning was disputed, but merely asked, and that repeatedly, that the whole of the articles should be considered in coming to a conclusion. The case, he added, was not based merely on Mr. Baig's rendering, but on the Court's translation; the tone of the articles was sufficient evidence. Mr. Lang dwelt at great length on the statement of grievances mentioned in Shivaji's utterances, commenting on their inflammable character and suggesting that no inference of getting redress by constitutional means can be inferred from the context, and said that the concluding portion did not mend matters. Paranjpi's Puran, he said, compared the Rajasua Jagna to the Diamond Jubilee and Duryodhan's sentiments referred to the discontent of common people. Professor Bhanu's reference to lost independence referred to the loss of Mahratta rule. Continuing, the Advocate-General said, in Mr. Tilak's speech there was a clear tendency to inculcate political assassinations on unselfish and patriotic motives. The Government does not object to any fair discussion of India's poverty or Shivaji's celebration as such; here, however, is an organised effort to create ill-will and dislike against the Government. If the jury found that the articles had a mischievous tendency, they should bring in a verdict of guilty. Mr. Lang closed his address at a quarter to one.

The Address of Mr. Pugh.

Mr. Pugh commenced his address in a slow and impressive styles. He pointed out the change of tactics on the part of the prosecution. The trial, if conducted in Poona, would have been better, because the Court language of that place was Marathi; while in the High Court, the Judge, the Jury and Counsel knew it not. Then, if there were a miscarriage of justice at Poona, there would be an appeal before the High Court. It was difficult to explain the great delay on the part of the Government to start the prosecution. The translations of the condemned articles of the Oriental Translator were stronger than the translations of the High Court. Then, the High Court translations were nearly an emasculated form of the Oriental Translator's rendering, while the literal translations of the condemned articles were even more mild than the High Court translations.

The Government had their translations ready between the 15th June and the 30th July. They had also seen the comments upon the condemned articles in the *Times of India*; still they nominated Mr. Tilak as a member of the local Legislative Council. Only when questions were asked in Parliament and Home authorities wanted the prosecution of Mr. Tilak, they instituted proceedings.

As the Government could find nothing objectionable in the *Kesari* of the 15th June, they gave a general sanction to their subordinate officers to prosecute Mr. Tilak for any article in any issue of his paper, under section 124A. or any other section of the Indian Penal Code.

Mr. Lang had asked the jury to convict the accused if the articles were considered mischievous. That was wrong on the part of the Advocate-General. He, the Advocate-General did not object to the discussion of the poverty of India; nay Mr. Pugh believed that in the opinion of the prosecution the discontent created by the discussion of the growing poverty of the country was not seditious.

Referring to the condemned articles, Mr. Pugh said that the first article was a poem and ought to be judged by a different standard than prose writing. This is done all over the world. The second article was a summary of three day's proceedings of the Shivaji Festival. The full text of these proceedings has not been placed before the jury. According to the Advocate-General the usual celebration of such a festival was not objectionable. Mr. Pugh then gave a history of the Shivaji movement, as

shadowed forth in evidence. There was nothing wrong in the mark of the Bhowani sword, which was the usual mark of Shivaji's sign-manual. *The prosecution saw in it an appeal to the goddess of destruction:* but Bhowani was Goddess Parbati in personal form. Any way, there was nothing unusual in such a signature. Mr. Tilak identified himself with the Shivaji movement in 1895. No objection was taken to that festival then. The second festival was celebrated in April 1896. No objection was raised then also. It was very surprising that objection should be raised now. Such celebrations were held in India, Scotland and Wales, which was the counsel's own country. Englishmen never raised any objection to such celebrations. *Bibhootipujah* was simply a resume of Carlyle's hero-worship, and there was nothing objectionable in it. The letter over the signature of "Ganesh," published in the *Kesari*, which opposed such a festival, in no way indicated the sentiments of Mr. Tilak.

The Government found something wrong in such a movement only after the murders of Lieutenant Ayerst and Mr. Rand at Poona. There was nothing to connect such innocent meetings of the festival with the propaganda of political assassination. The murder of Afzul Khan by Shivaji was discussed at those meetings, because it was a subject of current historical discussion.

Turning to law, Mr. Pugh said that English law was applicable in this case. The Counsel then entered into a long disquisition of the history of the law relating to sedition, with Jag's second right of petition, the Bishop's case and the Bill of rights, and declared that petitioning the Government was the birth-right of every subject of Her Majesty. In deciding seditious cases, Juries have now grown less nervous and more sensible than before.

Turning to the merits of the case, Counsel observed that no suggestion of conspiracy was made by the prosecution on the part of the accused. Mr. Tilak was a man of great ability. As regards his loyalty, there was a ring of genuine loyalty in his Jubilee articles. In these articles, Mr. Tilak stated that British power was firmly established, and was invincible. It was idle to suggest that a man like Mr. Tilak would bring about his own destruction by exciting people to overthrow the authorities. In the same manner, his position in plague matters was independent and friendly to Government, and made him incur the odium of his own countrymen. How could such a person incite people to rise on suitable occasions? This year, the birth-day celebration of Shivaji fell on 3rd May, but it was abandoned owing to plague. The coronation day fell on the 15th June, when the plague had subsided; so the celebration was held that day.

Passages similar to the condemned articles, were held harmless by the prosecution, even words such as *Mlechhas*, *Yavanas* were used in them. Mr. Pugh then explained the condemned passages. Shivaji's appearing under the present changed times, would not necessarily lead to an overthrow of Government. He was led to make people strong morally, mentally and physically. "Foreigners dragging" "*Lakshmi*" refers to money spent on money on frontier expeditions,—a complaint made by many Englishmen also and to the income-tax, which is complained of by both natives and Europeans. Such sentiments were not seditious. The theory of the Indian poverty was heard even in the House of Commons. The complaint, about the Brahmins imprisonment for disobeying Government orders were perfectly legitimate. Then they complained about injustice in course of justice. Even *Truth* comes out every week more strongly than Shivaji. The question of cows is a long-standing one; and even the prosecution do not deny the Hindu's right to protest. The reference to Fagan's case was perfectly justifiable. Mr. Pugh then referred to the pleading to the enlarged spleens. Outrages on women were common on Bengal side. Mr. Pugh observed that it was perfectly lawful to comment, so long as they did not stir up a rebellion. "Dad" is a comprehensive term. It means representation of complaint. The treatment of the Indian Princes was the subject of a long standing complaint. Making fun of Princes going to England uninvited, was no sedition. The real point in this poem was the advice given in conclusion. Mr. Pugh said that portions of it may be uncomplimentary, but perfectly true. There was a certain amount of pathos too. There was no sedition, veiled or unveiled, in it. Referring to the next articles, Counsel remarked that Dr. Manager believed in the existence of a higher kind of morality for judging heroes. Mr. Pugh explained fully the story of the Mahabharat, and pointed out to the jury that *Dharma Raj* meant the model of a king and his *Rajsuyagna* was compared to the Diamond Jubilee.

After a few more observations, Mr. Pugh finished his address. The case stands adjourned to Monday.

MR. PUGH'S ADDRESS.

FIFTH DAY'S PROCEEDINGS.

When the Court assembled this morning at 12 o'clock, Mr. Pugh rose to continue his address to the jury from the point he left off last evening. The Court was crowded as on previous days. Counsel began by reading the literal translation of Professor Bhanee's disputed passage. The proper word, he said, for "Swatantrya" was liberty, while the

word for "Chatuntaka" was separate. He explained the whole meaning of the passage as an exhortation to improve the moral, material and social condition. He similarly explained Mr. Jinwalla's speech and generally recapitulated the previous portions of the address. Mr. Pugh then went into the law of sedition. In England, he said, it included opposition to Government, rioting and libel; but in India it was confined only to action against the Government, rioting coming under Section 153 of the Indian Penal Code and defamation under Section 499. Sedition was placed under the chapter relating to offences against the State. His Lordship here interrupted counsel, saying that he was trenching on the Judge's duty of charging the jury. Mr. Pugh remarked that he would simply ask the jury to take the view of the law from the Judge's charge; but that as it was difficult to differentiate law and facts in such matters, he was bound to explain the law, subject to the Judge's charge; and quoted the charge of Mr. Justice Cave in the case of Barius, laying stress on the point that the intent to excite people to rebellion or tumult must be necessary and that mere violent words without any intention, should not be considered as sedition. Seditious passages, counsel added, must be judged in a fair, free and liberal spirit. Great and good results generally are accrued from a discussion of political articles, and so they should not be judged with narrow-mindedness. The liberty of the press must be preserved, and the jury must judge from a commonsense point of view. If the accused were actuated by an honest desire to bring measures before the public, they should, on no account, be found guilty. He then complained of Mr. Tilak's imprisonment, though there was no chance of his disappearing. There was, again, no evidence to connect the articles complained of, with the murders of Lieutenant Ayerst and Mr. Rand. The suggestion of overthrowing the Government was absurd, as no such attempt could be practicable without the combination of Hindus and Mahomedans, but the Shivaji festival alienated Mahomedan sympathies. Counsel then proceeded to read Sir James Stephen's speech in introducing section 124A into the Council. His Lordship objected to Mr. Pugh's reading that speech. There was a lengthy discussion, after which Mr. Pugh was disallowed to read it as interpreting the section, but he was allowed to read it as part of his address to the Jury. Mr. Pugh continuing said that Sir James' speech expressed that there must be intent to create a rebellious spirit. He then urged that advising the non-payment of an unpopular tax or getting laws changed, though such action might create disaffection, was not sedition. Counsel next turned to the *Bangabasi* case, and said that Chief Justice Petheram's definition of disaffection was not a happy one; it was merely an answer to Mr. Jackson's argument. Otherwise there was nothing objectionable in His Lordship's charge to the jury in the *Bangabasi* case. Disaffection, Mr. Pugh said, was used mainly in the case of regiments and of refractory subjects, and meant a disposition not to obey lawful authority or, in other words, to create a rebellion. He then referred to the Bombay riot case, to show that great latitude was generally allowed in interpreting poetical effusions. He then referred to the articles complained of, in the case, and said that these absolutely failed to show any intention on the part of the accused to create disaffection of such a nature as might tend to subvert the British Empire. Counsel incidentally mentioned that Principal Prior of Elphinstone School used the word "mleccha" as exclusive of Englishmen and read Mr. Tilak's explanation of the sentence in the next issue of the *Kesari*, characterising, it was honest and straightforward. He made the same remark on Mr. Tilak's letter to the *Times of India* of 30th June and explained at length. Mr. Tilak's position regarding the famine and plague policy of Government. Mr. Pugh then showed that the Shivaji festival was just the same as the

Wallace festival of Scotland, and quoted Sharp, Ackworth and other authors to shew that such movements were not only desirable but praiseworthy and perfectly consistent with loyalty to Government. At this stage the Court adjourned for lunch. When the Court re-assembled, Mr. Pugh resumed his address to the Jury. He said Mr. Tilak's criticism was extremely moderate in regard to Government measures and worthy of a true citizen. It showed not only his independence and fairness to Government, but a scathing criticism of his own people and, a friendly spirit to Lord Sandhurst. In fact, it was perfectly inconsistent with disloyalty. Mr. Pugh then explained the commemoration articles at length. He quoted from Mr. Cotton's *New India* and said that such views were perfectly consistent with imperial supremacy. The jury ought to take a liberal view of such matters. That day they had to decide the case of a native; the next day it might be the case of a European. Mr. Pugh was surprised that Government officers had gone to a Jury with such a case. Had the Home authorities got even the substance of the translations, they would never have sanctioned the prosecution. Mr. Pugh asked the jury to consider the matter without prejudice. He thought it was impossible for them to return a verdict of guilty. The jury alone were responsible for the verdict, and counsel had no doubt that they would pronounce the verdict accordingly. Mr. Pugh closed the address at 3-30 P.M. It was much appreciated, and there was great excitement. Though there was yet an hour and-a-half's time, His Lordship preferred addressing the jury to-morrow, as he said that his charge would occupy at least three hours.

SIXTH DAY'S PROCEEDINGS.

14TH SEPTEMBER 1897.

The trial of the case against Mr. Tilak was resumed at 11 o'clock, before the Hon. Mr. Justice Strachey and the same Special Jury, on Tuesday, and as it was the closing day of the enquiry, when a much larger crowd was anticipated to be present in Court than on the previous days of the hearing, the police had to take extra precautions to prevent a possible disturbance of the proceedings. With that view the side entrances were locked, as on the first day of the trial, and admittance was granted by the main entrance to members of the legal profession and well-known citizens. With the object of preventing any cheering or clapping of hands or any other sort of noise in the gallery, the police had seven European and fourteen native officers stationed there from an early hour. The police party, on duty in the court premises, was also stronger than on the preceding days. On the Bench the attendance was also larger than before, there being several European and Parsee ladies present. It being the last day of the trial when the result of this important State prosecution was to be known, The interest manifested in the proceedings during the five preceding days was more intensified than ever before. His Lordship and the members of the Special Jury took their seats at 11 o'clock precisely. Mr. Justice Strachey summed up as to the scope of Section 124. He said that the jury were bound to take the meaning from him and from nobody else, and he alone was responsible for the due construction of the Section. His Lordship then read the Section and explained the meaning and the scope of it. Disaffection meant hostility or ill-will, of any sort towards the Government—feelings of ill-will, great or small, intense or mild; and any attempt to excite such feelings brought the offender within the Section. Not action but feeling was the test. Where there was an attempt to make the people hate their rulers or to excite feelings of disaffection the offender came under the Section, whether he did so by writing editorial articles or by publishing a poem or by entering into a historical dissertation. Comments on the measures of the Government, if they excited hatred or disaffection to,

wards the Government, constituted an offence under the Section. The "measures" of the Government must be taken to mean everything the Government did or omitted to do. Coming to the word "disapprobation" in the Section, His Lordship said that it meant want of approbation, just as disaffection meant want of affection. The object of the "Explanation" to the Section was merely to protect honest and loyal journalists from the provisions of the Section. Disapprobation, however, unless kept within certain bounds, became disaffection and brought the writer within the provisions of the Section. It must be a disapprobation which was compatible with an honest desire to obey lawful authority—to be perfectly loyal, and with a general disposition to support the measures of the Government. Coming to this case, His Lordship said that the test was—did the writer intend to excite feelings of disaffection towards the Government in any way by anything he wrote, whether it was in editorial article, a poem, or a disquisition on some hero? His Lordship asked the jury, in considering the articles; always to bear in mind the time, the place and the circumstances of the case; not to take a drawing-room or philosophical view of them. They were to consider the intention with which the prisoner wrote the articles, and the effect which they were intended to produce upon the minds of the readers. The jury must ask themselves what could be in that man's mind when he wrote? They were to judge, not from isolated passages but from the whole thing. A writer in a newspaper sometimes writes in a hury, perhaps without waiting to use choice words and passages; and the jury must not judge from isolated passages. As to the translations, where there was no dispute as to the meaning of expressions, the jury would have no difficulty; and they could only use literal translations where there was dispute as to the meaning of the word. The learned Judge resumed his summing up after tiffin. He commented on the poem and the different articles. This was a tension of feeling between the people and the officers of the Government and on the 22nd June, European officers were murdered on the Road between Poona and Ganeshkhind. At a time of trial and trouble, when everything ought to have been avoided which was likely to cause the slightest hostility to the Government, the accused Tilak thought fit to publish those articles on Shivaji and against the measures of Government. The prosecution said, the the publication of the poem on Shivaji was to draw the sharpest contrast between the state of thing in the time of Shivaji and in the present times. The writer collected all the topics of prejudice against the British Government. He said that in the time of Shivaji grain was cheap, women were protected, people were happy and contended, &c.; and thus by the contrast which the writer portraited and suggested he seemed to do everything to excite feelings of disaffection against the Government. It was for the jury to consider whether the object of putting that in an article was, as the Advocate-General submitted, to suggest to the people that while Shivaji protected Brahmins, the British Government put them in prison. Then, what could be the object of bringing in the cow and the "shooting of women as bears" by British soldiers? To His Lordship's mind the object of the writer seemed to be to collect all points of prejudice which had no connection whatever with each other and excite feelings of disaffection against the Government. What connection was there between cows and British soldiers shooting women as bears? Why were these different things strung together. The object seemed to be, His Lordship said, to heap together all those things of prejudice which were likely to excite feelings of disaffection against the Government. Then, the writer said, "you cowards, why do you allow your women to be insulted?" It was for the jury to consider whether the redress suggested by the writer was by representation to Government or by some other mean.

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His Lordship told the jury to read the articles for themselves and see what this man was driving at, when he wrote—whether his object was to excite feelings of disaffection against the Government or not. Did Shivaji protect women and the British Government not? Did Shivaji protect Brahmins, and the British Government not? Were the people happy in Shivaji's time and were they not so under the British Government?

The Jury retired at 5 P.M. and immediately after Mr. Pugh rose to address the Court on those, insufficient three reserved points namely. (1) Whether there was sufficient order or authority within the meaning of Section 196 of the Criminal Procedure Code for the complaint made in his case, (2) If not whether that Court had power notwithstanding to accept the commitment under Section 132 of the Criminal Procedure Code and proceed with the trial; (3) If in regard to the charge, he directed the Jury that *disaffection was the absence affection.* Mr. Pugh then questioned His Lordship, whether his explanation was correct, to which the Judge admitted there might be shade of difference.

The Jury returned at 5-40 P.M.

The Clerk:—Are you unanimous?

The Foreman:—We are not unanimous with regard to the first accused Mr. Tilak.

The Clerk:—What is your verdict? Guilty or not guilty, and what is your majority?

The Foreman:—Six to three for guilty, and three for not guilty.

The Judge:—I accept the verdict.

The Clerk of the Crown:—Tilak you have been found guilty of attempting to create disaffection against the British Government. Have you anything to say why judgment should not be passed upon you according to law.

Mr. Tilak:—I wish to make a statement. Inspite of that verdict I still maintain that I am innocent; for this reason I think the verdict has been arrived at owing to the misunderstanding of certain Marhatti texts. In fact there was not a single intelligent Marhatti Gentleman put into this by the prosecution. It seems to have lost sight of, and not pressed on the attention of the jury, but whatever it is, I still hold that the writings themselves are not seditious, they were not written with any seditious intention, and were not likely to produce that effect and I do not think they have produced that effect on the readers of the *Kesari* or would produce on any intelligent Marhatta readers.

The Judge:—Tilak, you have been found guily of attempting to excite feelings of disaffection to the British Government established by law. And I agree with that verdict. I do not think any reasonable fair man applying his mind to these articles could doubt that in publishing them you have been animated by a feeling of disloyalty and disaffection to the British Government, and that you attempted to inspire those feelings on your readers. I have now to consider what sentence I shall pass on you. I may state at once that I do not intend to pass on you the maximum sentence allowed by law, or anything like that sentence. In my opinion the maximum sentence ought to be reserved for the worst possible offence under that section. Although I take a serious view of your offence, I do not take such a serious view of it as that. There are certain considerations, which I shall take into account in passing sentence. I take into account that this is the very first prosecution under the section in this Presidency and the second in India. The section under which you have been convicted has been allowed to remain for a considerable time almost as a dead-letter, and I think that you and others have been emboldened by this to think that there was no kind of writing in which you might not indulge with impunity. I shall take that into consideration to some extent in passing sentence upon you. I shall also take into account and will attach still more weight to the fact that, at all events, for a considerable period, you did good work in connection

with the plague and attempted to enforce a reasonable policy upon your countrymen and that to certain extent you co-operated with the Government and did so not long before you published these articles. I shall also take that into account in passing the sentence upon you, but, on the other hand, I must take into account all that are not in your favour. You are not an ordinary obscure editor and publisher, but you are one of the leading members of your community; and being a man of influence,—many of your people look for their guidance to you—a man of intelligence, a man of remarkable ability and energy, and who might under other circumstances have been a useful force in the state. Instead of adopting that course which would have brought you credit, you have allowed yourself to publish articles of this kind which, if persisted in, could only bring misfortune upon the people. I must also take into account that a man like you must know that, at such a time as this, it behoves every one, specially persons of influence, to be careful as to how they address the people in regard to their relation with the British Government. I have done my best to bear in mind everything that could be considered in your favour as well as the matters considered against you, and the result is, that I have come to the conclusion that I ought to pass upon you half the full term of imprisonment allowed by the section, namely, sentence of eighteen months' rigorous imprisonment.

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THE

STATE PROSECUTION OF BANGOBASI NEWSPAPER.

THE QUEEN-EMPRESS.

versus

JOGENDRO CHUNDER BOSE AND OTHERS.

APPLICATION FOR WARRANTS.

At the Police Court on the morning of the 7th August 1891 before A. P. Handley, Esq., Mr. L. P. Pugh, Officiating Standing Counsel, assisted by Mr. A. Dunne, and instructed by Mr. Ernest Cowie, Government Solicitor, applied for warrants against Babu Jogendro Chnnder Bose, (Proprietor), Kristo Chunder Banerjee (Editor), Brojoram Banerjee (Manager) and Aroonoodoy Roy (Printer and Publisher) of the *Bangobasi* newspaper, under sections 124A and 500 of the Penal Code, for sedition and defamation, by having published certain articles in the issue of that paper of the 20th March, 16th May, and 6th June, in which certain statements are made against the Government, and thereby attempting to excite popular feeling and discontent and disaffection towards the Government among the people. The following are the extracts read out by Mr. Pugh in Court viz, (1). From the paper of the 15th Choit (equivalent to 28th March 1891) relating to the age of Consent Bill, "People will by this time say that we are fully a subject people. In regard to our property, wealth, dependants, family, religion, usages and observances &c., we are completely subject to the English Ruler If the English Ruler wishes, he can deprive us of our property, insult our families, give them trouble and can obstruct us in the exercise of our religion, usages, and observances. People will say this, but we shall no longer be able to put our hands in their mouths. The English Viceroy, Governor-General Lansdowne Bahadur, the other day, in the Legislative Council in out-spoken voice loudly with swelling bosom proclaimed this very matter."

The article proceeds to state that—the Governor-General has said that the Hindu community must do what appears to be proper to the English—and that the Hindus must forego all that may appear opposed to what the English think proper, state further, "If in doing this your religion is destroyed, let it be. If you are obstructed in observances which have descended to you from time immemorial, let it be. If you have to give a handful of water to your belief in the shastras you must give it—still the mighty Ruler, the Englishman will never let you do that which may not appear to the English to be in conformity to good education, good morals and civilization."

The articles further on enquires whether it is the object of the Governor-General to destroy the civilization of Hindus and place them on the same level as his own nation and goes on:—

"If it so. O Probhu then declare it

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openly and then destroy our all, destroy our caste, religion and society; then we shall understand from what motives, for the accomplishment of what object, you are carrying out these measures." The article then says that—if the Governor-General has not envy of the Hindu religion in his mind and if he has entered on encompassing their ruin with the object of making his sway in India permanent, they clasp their hands and entreat him to say so plainly, when they will execute bonds binding themselves to perpetual slavery. The Governor-General may by the deep laid designs of politics diminish the strength of the bonds of Indian unity, but he will never be able to destroy them so long as the religion remains unshaken, and so forth.

Another article in the same issue is headed "The revealed form of the English Ruler" and extracts from this were read by the standing Council to the following effect:—

In enacting the Consent Act, the English have been drawn into the vortex of circumstances and have been obliged to cast off both the mask and the slough. Now stands before us the severe, terrible, disgusting, naked form of the Englishman. Our heart trembles at the sight of this form. As Sita was stupified on seeing the great ascetic, wearing the guise of a mendicant, transform himself suddenly in the ten headed, twenty-eyed King of the Rakshasas, so have we been stupified by fear, by wonder, by contempt, by insult. Oh Rama. Oh! Rama what terrible form. How fearful is its attitude. And in that attitude how violent the dance and how deadly the subdued laugh which reverberates through half the universe The leering eyes perpetually revolve like the burning wheel in the Potter's Kiln and with a thousand tongue in *Mlechcha* languages, with such words as pleases it, it is roaring incessantly. Oh Madhu Sudana, King of Kings. Is this our ruler?" After much more in this strain as to the fearful form of the Ruler who "slander the Hindus from the might of the gun" and so on, the article goes on to say that the Hindu religion cannot be destroyed, though the chief fear is that it will be and that the attempt to destroy it has rendered clear the policy of the English."

The next issue from which extracts were read is that of the 16th May last, the article being headed. "An outspoken Policy is the best for uncivilized persons."

The effect of this article is that fever, cholera and other severe diseases are allowed to spread amongst the Natives, innundations take place through embankments put up by the English giving way; people are ruined by the procedure followed in English law Courts, steamers, and Railway trains managed by Englishmen come to grief and people are killed, and other distress taken place, and the Government though they hear of this do nothing. But now "all the tears of the great English have flowed and his compassion gushed forth" for the protection of girl wives from their husbands.

"This is the complaint which we have all along been making. All have indirectly been saying that the English rule is merciless and indifferent. An instance of the difference between "white civilization and black barbarousness" is given in the shape of a story of an English lady in a train who threw copper at a girl's head when begging and knocked her down.

In the same issue of the 16th of May there is another article headed "the most important and the first idea of the uncivilized Hindu" and extracts from this were read with reference especially to paragraphs implying that rebellion was probable for the Native Soldiers of India though not for the ordinary inhabitants.

The following was the first part of the extract referred in:—

'If we except the soldiers, there is no probability of any rebellion among the ordinary inhabitants of India. We do not make such a general statement as that it would be improper and sinful

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for the Hindus or Musalmans of India to rebel against the Rulers who are of another religion, of another nationality and from another country," and it goes on to say that a subject population who are from day to day becoming exhausted and famished, who are without effort, without arms or training in war, are not likely to rebel against the English Rulers with an army skilled in the artifices of war.

The rest of the article implies that the English in spite of their "formidable indications of monstrous power" have everything to learn from the Hindus in the way of morality, and yet want by force of arms to reform their religion, and that if the Governor-General perists in the attempt he will make himself ridiculous.

The last issue is that of the 6th June and the article selected by the prosecution in that issue is headed "what is to be the end?"

The effect of this article is that the Government of India mismanages things so that the country will be ruined—and it says. "The best jewels of the present and the future life, caste and religion and rights, are also about to be sacrificed * * * * Death in the future is not far distant, at most fifty years. Does no one understand the matter? Who not? What help is it to understand it. * * * * Wherever there has been distress from want of food there have been unnatural deaths foling the distress, There have nowhere been so frequent dearths of food or famines as in India during British rule and in consequence there have been nowhere so many unnatural deaths in a country in which a white mountain could have been constructed out of the heaps of skeletons of the three hundred thousand men who died of famine in Orissa alone?"

The above comprise most if not all the Extracts read by the standing Counsel.

Mr. Pugh went on to say that these writings could not come under the exception, that they were merely in disapprobation of the actions of Government. Mr. Pugh, said in reply to the Court that there would be no delay on the part of the Government who were anxious that the case should be in time for the ensuing Sessions; and as the offence was of a very grave and serions charactor, it would be necessary to issue warrants for the immediate arrest of the offenders. The following witnesses were then examined by the Standing Counsel:—

Babu Durga Dass Lahiri, examined, said that he was a proprietor and editor of the *Anusandhan* newspaper. He lived at No. 8 Tamer's Lane, where his paper was published. He knew the *Bangobasi* newspaper. It was a weekly newspaper. Witness's own paper was a fortnightly one. He exchanged papers with the *Bangobasi*, and has been doing so for four years. He did not make any particular arrangement with any particular person. He just sent over his paper, and received the *Bangobasi* in return. He goes to the *Bangobasi* office. He knows Jogendro Bose the proprietor of the *Bangobasi*, K. C. Banerjee, the editor; and the manager and printer. He is on visiting terms with these persons, and has been so for the last four years. He has known Aroonoodoy Roy for about a year, the other he had known for seven or eight years. He could not distinctly speak to having seen copies of the three issues produced. These (produced) are copies of the *Bangobasi*.

Mr. Pugh here said that it was on these three copies of the paper that he was proceeding.

Sarat Chunder Roy, examined said that he was the editorial librarian of *Bangobasi* newspaper. He knew Jogendro Bose, the proprietor of the the *Bangobasi*. The office of *Bangobasi* newspaper is at 34-1 Coolootollah Street. Jogendro Bose lives in Bhobani Churn Dutt's Lane. He used to attend office regularly. He has a room in the office. He used to look after the religious books published. He does not look after any other department of the paper. Jogendro Bose has

been in Calcutta since October last without a break. Witness knows Kristo Chunder Banerjee. He is the editor. Since witness has been on the paper, K. C. Banerjee has always been the editor. K. C. Banerjee also has a room in the office, and it is his business to edit the paper. Kristo Chunder Banerjee attends office regularly; his lodging are in Sitaram Ghose's Street. He knows Brojoram Banerjee attends regularly at the office. He has all along been the manager. Witness also knows Aroonoodoy Roy, the printer of the paper, who has been so ever since wisness has been on the paper. Aroonodoy Roy head compositor before he became printer in the *Bangobasi* office. Witness s work as librarian was contained to the books sent for review.

The Magistrate then granted the issue of warrants, and asked Mr. Pugh if he would be in a position to go on to-morrow.

Mr. Pugh replied that he would be prepared to go on to-morrow. He could not promise to finish the case that day. He would further ask the Court for a search warrant, for the search of the *Bangobasi* office.

The Magistrate granted the issue of such warrant. At the request of the Standing Counsel the two witnesses [illegible] were warned to attend to-[illegible]

Late [illegible] by of Babu Kanye Lal Mukerji applied for bail on behalf of the printer and publisher, but Superintendent Lamb opposed the application. The Magistrate observed that the case was a non-bailable one, and as the matter would come before him to-day the pleader could renew his application, and he would hear what the opposite side had to say.

EXECUTION OF THE WARRANT.

The Bengali weekly journal *Bangobasi* is reported to have a circulation of about 30,000 copies, and is printed in Bengali. It has an office at No. 34 Coolootollah Street, and employs a large staff. Superintendent Lamb, assisted by Inspectors McCready and Robertson, with a number of native officers and policemen, armed with the personal and search warrants, arrived at the office of the paper about an hour after the processes were granted. The manager, editor and proprietor were absent, but the printer was in his office, and was at once arrested. The seareh warrants were then executed, and a number of books, receipts, files of the paper, and other articles were taken charge of by the police. No attempt was made to interfere with the regular routine of the paper. Several of the books of the paper were, however, not forthcoming, it being alleged that they were at the homes of the employees. Police officers were despatched to secure them. Section 124A. of the Penal Code under which the principal charges are la[illegible] refers to the offence of "exciting or attempting to excite disaffection." The punishment on conviction is "transportation for life or for any term and fine, or imprisonment of either description for three years and fine, or imprisonment of either description for three years and fine, or fine." The offence is non-bailable.

TRIAL IN THE HIGH COURT.

At the High Court on the 19th August, before the Chief Justice and a Special Jury the trial of the Editor, Proprietor Manager, and Printer of the Bengali weekly newspaper, the *Bangobasi*, was proceeded with, Mr. Pugh, Standing Counsel, and Messrs. Woodroffe and Evans prosecuted on behalf of the Crown, and Messrs. Jackson, N. N. Ghose, and Graham defended the prisoners.

The case having excited the keenest interest, special arrangements were made to provide accommondation for visitors. The trial took place in the Chief justice's Court. The jury were seated on chairs placed at the northern end of the room; the accused had seats in a special enclosure at the other end; the witness box was placed near the centre of the long table occupied by Counsel and Attorneys and nearly facing the

presiding Judge, while all visitors and spectators were rigorously excluded from the inner body of the Court, but were allowed into the space railed off behind the Court. There were a number of extra European constables on duty under the orders of Inspector Ingleton. The Court began to fill before 10 A.M., and half an hour later the Court was crowded, the great majority of the spectators being natives.

APPLICATION FOR ADJOURNMENT.

The accused all surrendered to their bail, but before they were arraigned or called on to plead, Mr. Jackson moved on notice for a postponement of the trial either for ten days or until the next Criminal Sessions. The notice was taken to the office of the Government Solicitors at 8-30 P.M. last night, but though there were some clerks in the office, and though Mr. E. Cowie the Government Prosecutor, was on the premises, the notice was declined and could not be served till this morning. He then read an affidavit by Babu Kally Nath Mitter, stating the grounds upon which the application for postponement was based, to the effect that, though repeated applications were made to the Government Solicitors for copies of the translations, upon which they intended to frame the charges and for copies of the charges themselves, and though they promised to forward copies of the translation and charges as soon as they were ready and as soon as the counsel for the prosecution got their copies, on the 18th instant he received a letter from Mr. Cowie enclosing five printed copies of the translations of the articles in the *Bangobasi*, and from that letter he for the first time came to know that the Government intended to use other articles besides those put in the Police Court in support of the charge, and at the same time he received five copies of the charges prepared by the Clerk of the Crown, and at a quarter to 5 P. M. he received copies of translations of other articles from the *Bangobasi*, covering 16 pages of foolscap print. The affidavit went on to state that it was impossible to instruct counsel in the short time which intervened, and that he believed the defendants would consequently be prejudiced in their defence unless time was granted. He had not had time to master the case to procure certain authorities, and that this application was *bona fide* and not for the purpose of causing unnecessary delay. Mr. Jackson then continued to say that the Government had a period of time extending over weeks to prepare their case, and yet they were not in a position to deliver their charges until yesterday, and it was impossible for him, within the short space of 12 hours, to consider whether the charges were sustainable or not and to consult the authorities; that it was a matter of the greatest importance, considering the nature of the charges laid before the Court, and he therefore submitted that the counsel for the defence should be allowed sufficient time to look up the authorities, especially as there were in the indictment charges of such an extraordinary character as a charge of defamation against the Government, the charge setting forth "that by publishing the words set forth the accused defamed the Government therein mentioned." Suppose it turned out to be that the Government there mentioned meant the Government of France. Had anybody ever heard of such a charge like that, and was he to be called upon in 12 hours' time to be prepared to meet such an extraordinary charge.

The Chief Justice.—If that is your worst diffienlty it should not take much time to get it up.

Mr. Justice.—No, my Lord, it is right to ask counsel to get up a case and be prepared for the defence in so short a time, and therefore I apply for a postponement of ten days.

The Chief Justice.—That cannot be done. The case must be taken now, or it must be made a remand, but in that case the terms upon which that can be done must be considered. But I must first hear the other side.

Mr. Pugh, Officiating Standing Counsel, opposed the application, and with reference to the assertion that there had been great delay in furnishing the defendants' solicitors with copies of the translations and of the charges, he stated that every expendition had been used, and copies were supplied to them at the same time as to counsel for the prosecution. A great deal had been made with reference to the charges. He stated that, for all practical purposes, they were substantially the same as those before the Magistrate; and as regards the translations, the Bengali of course was the same, the articles were their own articles, and they were perfectly well aware what they were. Further the translations of the articles in respect of which the accused were charged were substantially the same as those used at the Police Court, and copies of these were furnished in the Police Court.

The Chief Justice—You have given notice of your intention to use a number of articles which were not before the Police Court?

Mr. Pugh.—The translation we propose to use of the articles in the indictments now are substantially the same as the translations used in the Police Court, but we thought it better, in order to see whether the translations were correct, to have the translations made by one of the Interpreters of the Court.

The Chief Justice—On what translations do you frame the charges?

Mr. Pugh.—On the Court translations; but they are substantially the same; there are a few alterations here and there, where they required to be corrected, but they are very small. And there was no ground for saying that their case would be prejudiced in any way.

The Chief Justice.—When did they get the Police Court translations?

Mr. Jackson.—Long ago, and we had them compared by a learned pleader of this Court, and found mistake upon mistake in the language used.

Mr. Pugh.—With regard to the other articles, it is usual to give notice where you intend to call witnesses, not called in the Police Court, and probably it would be right to give them notice of the intention to use other articles from there own paper; but I know no ground for saying that we are bound to furnish them with a translation of those articles, yet we gave them copies of the translation free of cost.

The Chief Justice—When did you give notice, not of the translation, but of your intention to rely on these other articles?

Mr. Pugh.—Yesterday. These articles were out of their own paper; they are not charged.

The Chief Justice.—They are merely witnesses to show their animus.

The Chief Justice.—The allegation was that the Government themselves were under the impression that they would not be ready by to-day. Is that denied?

Mr. Pugh.—Yes, the affidavit was only put into our hands as we came into Court.

The Chief Justice.—That does not make much difference. The only question is whether there is any danger of this not being a fair trial by reason of more time not being given.

Mr. Pugh.—I submit not. Supposing even they did not get any notice, but produced certain articles even at the time of trial, I don't know whether any objection would lie. I should not have done that, and on the contrary we have done everything in our power by even giving them translations of their own articles. I am bound to put before the Court another matter about which I am not in a position to produce at present in any affidavit, but my instructions are that circulars and placards are being sent about.

Mr. Jackson.—I object to this altogether.

Mr. Pugh.—I hold one of them in my hand now, and if they are anything of the kind I am instructed they are, I ask that your Lordship will not make

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this case a remanet, or if you do, that the consequences to the public peace may be very serious.

The Chief Justice.—There is not the slightest doubt that it is very undesirable that this case should be made a remanet, unless it is absolutely necessary in the interest of justice that it should be done.

Mr. Pugh.—Most undesirable as regards the peace of the country and everything else; and your Lordship will see how desirable it is in the interest of the people themselves that the case should be heard as early as possible. We did this to complete the case and to enable them to come prepared to Court.

Mr. Jackson said he was authorised to deny that any circular or placard was issued on the part of the *Bangobasi*. The relative position of the counsel for the prosecution and for the defence were very different. They have been considering this case for weeks; they were fully instructed days and weeks ago; but we come perfectly new to the case until these translations and charges were put into our hands. His friend said he was not bound to furnish them with translations. If it was the practice of the Court to set out articles without translations, I would have no objection, because then I would be entitled to put my interpretation on the words used.

The Chief Justice.—The new articles are not charged with the others, and they are not printed together with the old ones.

Mr. Jackson.—This is not like a case of theft, where a person is charged with stealing this or that. Are we not entitled to put in evidence, or are we to be shut out in this way? Why should I accept as a matter of fact that these translations correctly represent what is supposed to be represented in these new articles. It is not the case of an ordinary translation, where you are bound by the Government Interpreter. Suppose I call people equally competent, who would say that something utterly different was meant, would your Lordship proceed on the assumption that this, being the sworn interpertation, his construction must be taken as correct I say that we are not ready to go on with this case. I can go on if your Lordship compels me to go on, but I have not had time to look into these and several other matters to enable me to do justice in a case of this kind, and I trust your Lordship will grant the postponement we ask for, or make this a remanet. There is nothing to show that there is any ground for supposing that the peace of the country will be disturbed, and they will have the additional advantage of Mr. Phillips's assistance.

The Ceief Justice.—This is in fact an application to make this case a remand, because if it is not taken up at once it will be impossible to commence it this Session, and consequently not till the expiration of the vacation. Really and in faot the only ground for the application is that the prosecution have given notice of their intention to use at the trial as against the accused certain articles taken from their paper which are not included in the charge. These articles, if used at all, will be used in the character of fresh witnesses, and if it were a question of witnesses whom it was necessary to contradict or to enquire into the validity of their testimony, it might have been necessary, to postpone the trial for that purpose. But in a case of this kind, where there can only be a question of the meaning of the articles where there is any doubt, counsel will be able to use arguments to show that they do not bear the meaning sought to be put upon them. I see no reason for postponing this case, and the matter must take its course.

The Defamation Charges.

Mr. Jackson then took objections under Sec. 273 of Criminal Procedure Code, to the 2nd count of the indictment, which contained a charge which he submitted could not be made. Sup-

pose it was a case of a private individual, what would it amount to ?

The Chief Justice.—Defamation is a compoundable offence by the person defamed. Who is the person who in this case can compound ? You can say, if you like, that the Government is not a person or a corporation.

Mr. Jackson.—I am coming to that. There is no precedent for such a charge and the object is simply to be able to obtain proof under this count which could not be given under the others.

The Chief Justice.—I should like to hear what Mr. Pugh has to say to the objection taken by Mr. Jackson, that there is no such offence within the Penal Code as defaming the Government, and that defamation is defamation of an invividual, either a person or a corporation.

Mr. Pugh.—With regard to the objection as to form, I should like to point out that the "Government therein mentioned" is the Government in the first count mentioned, that is to say the Government established ay law in British India, as stated in the first charge, and with regard to the merits, I submit it is a perfectly good count under section 500 of the Penal Code, and that you can in England have one count for libel and another for seditious libel, as in the case of Collins, which was a case with regard to the Metropolitan Police taken down to Birmingham. The explantion to section 499, provides that defamation may be charged against a class of persons as was done in the *Nildarpan* case which was tried within a year after the passing of the Penal Code.

Mr. Jackson.—That case was not tried under the Penal Code. The operation of the Penal Code was by another enactment postponed till the 1st January 1862, and the *Nildarpan* case was tried in July 1861. I cannot charge my recollection whether in Burlett's case there was a count for libel simply.

The Chief Justice.—In the *Nildarpan* case the libel was not against the Government.

Mr. Pugh.—No it was a libel on the Indigo Planters as a class or section of the community.

The Chief Justice.—The Government is not a class.

Mr. Pugh.—If there is anything in the objection it follows that from 1862, when the Penal Code came into operation, until 1870, when section 124A was inserted in the Code, there was no provision whatever against libels on the Government.

The Chief Justice.—Is this indictment under the Common Law or under the Penal Code ?

Mr. Pugh.—It is under the Code ; but if it does not come under the Code, I shall ask your Lordship to let it be amended so as to come under the Common Law, but I submit that it comes under the Code, otherwise from the time the Code was passed, up to 1890, the Government had no remedy against any libel, because section 124A framed in 1833, was only added to the Code in 1870. Why should not the Government as well as any other collection of persons be protected under that section ?

The Chief Justice.—You are supposing that the Government is a collection of persons ; you are assuming the whole thing.

Mr. Pugh.—The Government of India is conducted under the name of the Governor-General in Council. That expression was introduced in the Statute 3 and 4, c. 85, as the name by which the Governor-General and his Counsellors were to be called, and they are a collection of persons to all intents and purposes, and are entitled to be protected by the law. It may be that this offence does not come under the Chapter of the Penal Code relating to offences against the State, but my answer is that that chapter relates only to offences against the State, and it does not imply that the Government of the country has no protection afforded to them under any other general section of the Code. Suppose a man defrauded the Government of money, could it be said that he could not be indicted for cheating, and that the indictment would have to be quash-

ed out because it did not come under the chapter relating to offences against the State? I submit that the Government is entitled, as much as any individual, to protection, and that a provision, which has general application, applies to the Government as well as to all the subjects of Her Majesty. Otherwise, unless the libel were an attempt to incite under section 124A the Government would be without protection.

The Chief Justice.—Oh, no! It may possibly be a distinction without a difference. It is a mere question of who is to be the prosecutor. If the Governor-General and the whole of his Council are defamed, they can prosecute the libeller as well as anybody else. The question is whether they can prosecute as the Government. I don't think it will stand.

Mr. Pugh.—I submit the prosecution is by the Crown.

The Chief Justice.—You may have it in this way, who has the right to compound the offence? This prosecution can only be put in force by the person injured, and that person has a right to compound the offence for any consideration he thinks fit. Having regard to that, the Government of India of the time was the person within the meaning of this explanation.

Mr. Pugh.—In the *Nildarpan* case some of the members of the class might have changed. In defaming a collection of persons, you are defaming them as a body; and with regard to compounding of the offence, it is not a question likely to arise here, and I submit that, having the right to compound, has no bearing upon the case. If sections 499 and 500 did not apply to protect the Governor-General in Council, then they are wholly and absolutely without protection against any defamation, except in so far as it may be an incitement to certain feelings mentioned in section 124A. The *Nildarpan* case was argued by a Full Bench after the trial, and Sir Barnes Peacock, the Chief Justice, entertained no doubt whatever on the point.

The Hon. Mr. Evans followed on the same side regarding the interpretation of the section of the Penal Code regarding defamation, and referred at some length to the facts and circumstances connected with *Nildarpan* case, and argued that the Government of India, as by law established, had at least as much cohesion in common between them as the clergy of the diocese of Durham, or, as in this case, of the scattered indigo planters of Bengal. It is a question of the interpretation of a Statute, and it is very desirable that it should be decided one way or the other. It would be a curious thing if the East India Company, which constituted the Government of India before the Code was altered, had apparently protection from libel as well as from seditious libel, and the Government of India had now lost that protection owing to the passing of the Penal Code. Of course the East India Company had a corporate existence.

The Chief Justice.—That is quite a different thing.

Mr. Evans.—But corporate or not corporate, as long as they are a collection of persons performing the functions of the Government of the country, I submit they are entitled to the same protection.

Mr. Pugh.—If your Lordship is against us, I would ask your Lordship to reserve the question for the opinion of the High Court.

The Chief Justice.—I don't think the Government is a person within the meaning of section 499 of the Indian Penal Code. I do not think it desirable, at this stage of the enquiry, to give any reasons for that opinion, but it is my opinion certainly that these defamation charges should be struck out.

Case for the Crown.

The following gentlemen were empanelled as the special jury to try the case:—Messrs. A. Veitch, T. K. Milne, J. M. G. Prophit, A. A. Apcar, C. H. Swinden, E. Cable, O. Steel, A. Campbell, and Babu Boykantonath Bose. The following gentlemen were challenged by Mr. Jackson:—J. A. Toomey,

N. H. Phelps, Jas. Sinclair, E. Trelawney, T. P. Jack, and Babu Joygobindo Law; while the Crown challenged the following :—D. J. Bagram, Prosad Das Mullick, and A. Stephen.

Mr. Pugh, in opening the case for the prosecution, said that it was one which the Jury had heard or probably had observed, of very great importance—one of the most important cases within his recollection in more respects than one. It was a complaint by the Government of the country, to a Jury, asking for protection against a certain Native newspaper which was published here in Calcutta. It was also a case of great importance, in that it was for the Jury to determine the meaning of section 124A of the Penal Code, which came up for the first time. It would be for the Jury to decide whether any offence had been committed, under that section, and that was the question which was now placed before them. The articles had been read to them, they were of great length, and he was sorry to say that he should have to put them before the Jury again very fully, not perhaps the whole of them, because he would have to point out to them what, in the view of the prosecution, was the real bearing of those articles, and what meanings ought to be attached to them. Before going further, he wished to make another observation, which had often to be made in the High Court, but which he very seldom had occasion to make. There was no disguising it that this prosecution had evoked very great interest in the town of Calcutta; that the matter had been very much talked about and, he was sorry also to add, very much written about. Now what he wished them to do was to disabuse their minds entirely of anything that they might have heard or read outside that Court, to bring themselves to a calm and impartial consideration of those articles and to consider the results which were likely and intended to be brought about by a dissemination of those articles. He wished also to ask them to consider the class of people who would be likely to read those articles, and also the circumstances of the country at the present time, because in order to come to a just conclusion it would be necessary for them to bear all these matters in mind.

The Liberty of the Press.

Now a great deal, he had no doubt, would be said in the course of this case with reference to the liberty of the press, and it would be urged that this prosecution was an attempt to infringe the liberty of the press. The liberty of the press in this country was an undoubted fact, and with the exception of three years it had never been affected since the year 1835. It was unnecessary to go into the question of what the position of the press in this country prior to 1835 was, but in that year, under Lord Metcalfe's Government, the press in this country became a free press, and, with the exception of the three years from 1878 to 1881, he was right in saying that it continued to be a free press. He hoped that this would still continue. But whether it was continued, or whether it was not, he ventured to say that it would depend upon whether the Government would get Juries to do their duty with reference to this matter so as to curb the license of the press without interfering with its liberty. It was only upon the Jury that the Government of the country depended for protection against defamation, and it was the maintenance of a free press in India appeared to depend upon juries doing their duty. Now if any one speaking for the liberty of the press claimed, in the name of the liberty of the press, the right to libel the Government, all he could say was that this was a novel and entirely new doctrine in regard to the liberty of the press. He did not think that it could be said that the press was not perfectly free in this country; but supposing a paper had, as in this instance, gone beyond that liberty, and had brought itself within the sections of the Penal Code, then he asserted that not only was it in the interest of the Government, but also in the interest of the

press itself, that a jury should bring in a verdict of guilt, against that paper.

With reference to the Government itself, it was necessary that the Government should have protection. It was impossible, he put it, for any Government in any country, supposing that the press was at liberty to hold it up from time to time to public execration, to point to that Government as being destroyers and persecutors of the people, to point to that Government as having a settled design to destroy the religion of the people, to point to it as a Government which was the cause of famines, cholera, and various other calamities; it was impossible, he repeated, that the Government of the country could be carried on, supposing this free press was to be allowed to give circulation to these stories, inciting the people to acts of violence, riots by repeated allegations that the religion of the people was to be destroyed! Was not all this inspiring against the Government feelings of disloyalty, feelings of loathing, feelings of hatred, and feelings of contempt—feelings which at the present time, especially have found vent in riots at Calcutta, Benares, and elsewhere. Now if this was so, it was quite clear that the Government was bound to protect itself—bound not only in its own interest, but also in the interests of the country, in the interests of those whom it governed. It must not be taken that the remarks which he made with regard to the freedom of the press applied generally to the press of this country; neither did they apply to the Native press generally because he was satisfied that the great body of the Native press had recognized the good which has resulted to them from English rule, and that they were loyal to the Government. He would repeat, and say sincerely, with regard to a large portion of the Native press, that it was conducted in a highly respectable and trustworthy manner. It discussed all measures of Government in the widest possible sense, and assigned sensible reasons when they dissented. This, he thought, was a great blessing, and it would be a very sad day, when authorities thought it necessary, owing to the foul character of some of these papers, that repressive measures should be taken. With regard to the rest of them, supposing any measures of this kind had to be taken, it would be impossible to single out any particular papers, and the measures would have to be applied to the whole of the Native Press, and be presumed to the European Press also.

India and Ireland.

He would read to the Jury a few lines from the charge of Mr. Baron Deasey in the case of the Queen against Richard Pigott, in which his Lordship pointed out that it was necessary for the Government to protect itself, and if a jury found that any particular newspaper has excited feelings of hatred and sedition against the Government, that they ought not to hesitate to find a verdict against it. The Jury would observe that Baron Deasey, in speaking of the necessity of stringent measures, had referred to what he had before alluded to, namely, measures which they would adopt if they got no redress from juries such as what was done in 1878, when they took steps of their own, whenever they thought fit to proceed against any particular paper. He had referred to this case and would refer to another later on reported in the same volume, but just at this time he wished to place this before them, that the state of Ireland was analogous to the state of affairs here, because the position of Ireland in regard to the Imperial Government was very much like the position of India at the present day, with reference to the English Government. In England there was a Party Government. One party might come in and another go out, and yet the Government of the Queen went on as before, and the incoming Government came in by the votes of parties at general elections. Therefore, the use of language which could not be justifiable here was common in England, and was solely used for Party purpose with a

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view to turning votes at the elections. When the Jury came to deal with these libellous matters the whole aspect of the case changed, and was wholly different and the aim was different. Even with regard to the Age of Consent Bill an agitation was started which, to some extent, justified the feelings of those persons who were opposed to the Bill; but in these articles, on this very question, no attempt at even a reasonable discussion of the measure was made. So again as to other questions, such as famines, outbreaks of cholera, the persecution of their religion, they would find nothing in the shape of sober argument. They would find nothing but vituperation and invective. They would find no reference whatever to reasonable precautions taken that might be taken and no references to reforms in the country. They would find that the articles discussed these questions with a view only to showing that the Government were answerable for all these things, and, as a Government, were wholly irresponsible and heartless. They would find it stated in one of these articles that rebellion was not possible, but in an article, which appeared on the 16th of May, the writer appeared to have had a warning from some friend as to what his previous article intended. How did he deal with it? He simply said, "We cannot do it, we are only ordinary inhabitants, and without the soldier classes we are not in a position to rebel. Mr. Pugh put it that the intention here was plainly to bring people into this frame of mind "we would rebel if we could, but we cannot." This is a position wholly inconsistent with loyalty to the Government. But it went further than that. The writer of the article seemed to harp upon one thing. He addressed the Hindus, pointing out to them that the Government was persecuting their religion, and that they were helpless in the matter. He also pointed out the high prices of food in the country, and charge the Government with being responsible for this. The writer added that in fifty years all the people would be dead of starvation, and that so long as the Government remained they could look forward to nothing but starvation. The writer then pointed to a similar state of things under the Emperors Tiberius and Claudius, and then alluded to the Socialists of Europe, and went on to say that where there was fire below the mountain was certain to come out at the top. Counsel asked what could all this mean? It could only mean a most undesirable position of affairs. If this sort of writing was to be allowed to go on, the Government must one way or another do something to protect themselves, and Mr. Pugh would show, by reference to what the accused had since published, that their intentions were that the people should be made discontented and dissatisfied, when they said the dirge of the English Government in this country might be sung. This he would be able to show, and also to show clearly. The necessity for the protection of Government in cases like this had been clearly recognized in all countries, and recognized by the freest States. In particular he would draw attention to the fact that in America there had been provisions of law enacted rendering people indictable for libelling the Government of the country, the Congress, and the President.

The Reference to Aurungebe.

Before referring to the articles themselves he wished to point this out to the Jury the circumstances of this country, because he had no doubt it was a matter which would be pressed upon them by the other side. He did not think that any argument of that sort, if properly appreciated, could have weight against this prosecution and in that view he invited the jury to consider the circumstances. The way the argument could be used would be this: if there was a rising in India, if during the time of the Mutiny these articles had been written, then they would become very serious matter for people to write and

publish them ; but there is no Mutiny now, and these are the piping times of peace. He could quite conceive the force of this argument, but these writings must be measured with reference to the circumstances of this country, where there was always danger of riots, and when consequences were to be considered which were likely to ensue under a foreign rule. This was matter for the Jury to seriously consider. Was not this a country where appealing to the religious feeling of the people, pointing out to them that their religion was about to be destroyed must always be dangerous? Was there any period in the history of this country in which appeals of that sort were not quite sufficient to arouse the people? He put it to the jury that even at the present moment riots were going on from time to time. He repeated, was there any year, either this present year 1891 or any other time, which could be pointed to, in which the Government of the country could safely be held up to the people as the persecutor of Hinduism or Mohamedanism? These article contained pointed reference to the Emperor Aurungzebe in comparison with Lord Lansdowne and Sir Andrew Scoble. What was the meaning of all this? The meaning was simply this, that the Government was merely held up as the worst persecutor of the Hindu religion in India. Mr. Pugh did not think he was wrong in saying that the Hindus looked upon the Emperor Aurungzebe as the most persistent persecutor of their religion. Kala Pahar, again, was a Mohamedan gentleman who made himself notorious by destorying Hindu temples in Orissa, and also by destroying an image of Juggernauth he found there. Kala Pahar was held in the utmost abhorrence, from the fact that he was originally a Brahmin, and ultimately became a pervert to Mohamedanism. Was there any time, any period, in the history of the country since its conquest by the British, Mr. Pugh asked, where it could without danger to the public peace be said that the Government of this country could be compared to Kala Pahar? It did seem an insult to any ordinary understanding to say so. There was another point in regard to the circumstance of the country which the Jury had got to consider.

Appeal to the Superstitions of the People.

As he had already told them, Party Government in England in the sense of one Party being voted in and another voted out was of very recent date in England. Education was more advanced there. More people read papers there than here, but who were the people likely to be impressed by stuff like that contained in these articles. They were not the higher class of Hindus, they were not the most respectable, but he took it they were men mostly of the lower orders, and this could be gathered from the language of the articles themselves. They were not articles deficient in power, they were not destitute of a certain amonnt of force of language, indeed they were possessed of considerable force of language, and he observed that they were directed to the most superstitions of the people. They were directed to a class of people who did not usually consider or reason in respect of different measures of the Government; they were people whom it was easy to excite or inflame in respect of something in their old legends, and instead of discussing measures of Government, that Government was likened to the Government of Ravanna, who was a Raksha, about the lowest form of demon it is possible to conceive. This Ravanna, a King of Ceylon, was said to be a devourer of human flesh, who, under the disguise of a *mendicant*, carried off Sita, the wife of Rama. This was not the *sort* of reasoning which could come under any protective explanation of the sections of the Penal Code which referred to libel. Any free and fair discussions of the measures of Government was no libel, but here the line the writer took was to like the

Government of Ravanna. They referred to the story of Arjuna, which was to be found in the Mahabharatta. Arjuna was going to war and Krishna who had before acted as his charioteer appeared to him before the battle as the god of destruction with many mouths, with projecting teeth, and his enemies falling into his mouth, and being ground between the interstices of his teeth. This is the picture of the British Government. The purport of the article was to convey that Arjuna had no idea of this great glory of Krishna, and he asked to be forgiven for anything that he had said in jest treating him as his friend. Mr. Pugh put it that that article intended to convey the idea that the British Government had come forward in this new and revolting form to destroy the Hindu religion. It implied that the Government had been treated as a friend, and would not do it but that they begged pardon for not so treating it in the future.

DESCRIPTION OF THE ARTICLES.

After lunch Mr. Pugh went on to say that these were the preliminary observations he had to make. He preferred to go through the articles themselves before calling attention to the portions which would show how they came within the definition of the sections of the Penal Code. They were a series of articles, two of them published on the 28th of March, two on the 16th May, and one on the 6th of June, so that the jury would see that they extended over a considerable time, and formed a connected series. The prosecution were enabled to frame charges with reference to three issues of the paper only, but other articles he should place before the jury, some of which intervened between these, and some were written subsequently up to within a week of the date of the initiation of these proceedings—all these articles appeared the same design running through the whole of them. There was one thing more to which he ought to draw attention, and that was this, that it struck persons who read them in the first place without paying attention, that they were not very clear, in that there was a vein of irony and sarcasm running through them. For instance, in one part one would find it stated how very superior Hindus were in point of civilization to Europeans, and in another part the writer turned round and said, "Oh! we are undoubtedly very uncivilized, and our rulers very civilized," and so on.

The Standing Counsel read the articles in detail commenting on portions of them and on some portions of the further articles which he proposed to put in. After that the Court rose for the day. The case resumed next morning at 11 o'clock.

SECOND DAY, THURSDAY, AUG. 20.

THE TERM "DISAFFECTION."

Mr. Pugh, in continuation of his address to the jury, said that he had finished yesterday laying before them the articles, and he was afraid it was a wearisome task to them, but they would see that it was necessary in order to show what appeared to be the meaning of these articles and the application to them of the law. He would to-day without further preface consider section 124 A. of the Penal Code, and what construction was to be put upon it. That section was framed by the Law Commissioners in or about the year 1837. The jury would remember that yesterday he gave them the date of the enfranchisement of the press under the Metcalfe's administration as the year 1835. Two years after that, it was proposed to insert a section in the draft Penal Code, which was exactly in the same words as section 124 A., with the exception that, instead of the "East India Company," the words "the British Government by law established" were substituted in the latter, and it would not be out of place to consider what the position was at the time in India. Protection was needed then,

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even more than at the present day, as there is a great difference between the strength of the Government of the East India Company at the time and of the British Government at the present day. That section was omitted in a most unaccountable manner from the Penal Code which was passed in 1860, but it was introduced by an amending Act in 1870, and from that time to the present day there had been fortunately no prosecution under it. To this section he should have to ask their careful attention. It provided that "whoever by words either spoken or intended to be read, or by signs or other visible representations or otherwise, excites or attempts to excite feelings of disaffection to the Government by law established in British India, shall be punished," etc. Omitting from that the words which are not material to the present case, it would run "whoever by words intended to be read attempts to excite feelings of disaffection to the Government by law established shall be punished," etc.; so the offence before the jury was "attempting to excite, by words intended to be read, feelings of disaffection to the Government." Now that was very wide indeed, but it was not intended that the section should cover everything which would come within the portion which he had read: therefore they had an explanation which was also wide in its terms, and which he ventured to think they would consider would cover any writing which, in their opinion, would be proper to use, the general word used without any technical meaning. If they would bear in mind the explanation to the section, they should consider whether it did not cover every sort of lawful criticism of the measures of the Government, and did not leave a person free to do anything which an ordinary jury would not consider to be blamable.

The explanation runs thus:—

"*Explanation.*—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within the clause."

Therefore the making of comments on the measures of the Government with the intention of exciting feelings of disapprobation was not an offence within this clause. Here very great latitude was allowed, and very properly allowed; and as long as a man, confined himself within the terms of that explanation, he would not come within the provisions of the section. He then asked their attention to the meaning of the words of the explanation. The disapprobation must be compatible with a disposition to render obedience and support to the lawful authority of the Government against attempts to subvert or resist that authority. It might be that obedience would be given owing to the force and the power of the Government; but more than that was wanted. The jury should require the disapprobation to be compatible with a disposition to support the authority of the Government against unlawful attempts, not only to subvert, but also to resist the authority of the Government. It was impossible, in reading those articles to say that they were compatible with a disposition to give assistance to Government against any attempts to resist their authority and even with regard to rendering obedience, unwilling obedience, owing to the great force at the disposal of the Government, it would not be sufficient because the disapprobation would be incompatible with a disposition to support the lawful authority of the Government against attempts to subvert or resist it. Suppose one were to put people into this condition, that they would not be disposed to render obedience to the lawful authority of

Government, or to support the Government against attempts to subvert or resist it, that would clearly not comply with the explanation or be compatible with a disposition to give assistance to the Government against attempts to resist their authority. Now that was the whole of the section, and the jury might test it in one of two ways. They might find whether the prisoners came within the first part of the section; but even then they would have to see whether they did not come within the words of the explanation. Counsel submitted that it was impossible to say that these were articles which could be at all permitted under the explanation of section 124A. The term disaffection was a very wide one, and the offence was attempting to excite feelings of disaffection to the Government of India.

Now the meaning of the word "disaffection" was given in a valuable work of considerable authority. "the Metropolitan Encyclopædia," published in 1845. It not only gave the meaning of the words "disaffection" or "to disaffect," but it quoted from standard authorities with regard to that meaning. The meaning was—"to be or cause to be without affection, without attachment, friendship, regard, love, or goodwill; to dislike, to have discontent, to dissatisfy, to discompose;" so that the exciting of ill-will against the Government on the part of its subjects must necessarily come within the meaning of this section. There were one or two other points to which Mr. Pugh wished to refer. The jury would find that the word "disaffected" was used not only at the time of the Commonwealth, in Ludlow's memoirs, but before that, in the State trials, and it was used with reference to persons who were at ill-will with the Government for the time being though they did not shew it by any overt acts. There were, for instance, in some families persons who were ill-affected and others who were not, and from those who were not ill-affected information was got as to those who were. They would find that the words were used before the Commonwealth for seditious libels in England and Ireland in connection with the word "discontent;" so that there was no neceesary element of force in the definition of disaffection. It did not point to any necessity for there being a direct incitement to rebellion or any particular form of force.

LIBERTY OF THE PRESS: A COMPARISON.

Supposing that there was any difference between the English law and the section the Penal Code, it was by section 124 A of the latter that the jury would have to go. Counsel would not enter into the English authorities at any length, but would do so briefly in view of the purpose with regard to which he addressed them yesterday, to show that there was greater libety of the press here than in England, and he would show that by an authority which every one would admit. He would show that the law in England was even more strict than under that section of the Penal Code. It would be seen from Sir James Stephen's History of the Criminal Law that the law in Germany was stricter than the law in England, and the law in France was still more severe. Leaving out Russia and other similar countries, and taking only France, Germany, England, and India, the law in France was the most severe, the law in Germany came next, the law in England stood third, and in India greater latitude was allowed than in any of those countries. Sir James Stephen laid it down in this way, and Mr. Pugh referred to his digest, because it was the shortest and most compendious digest of the criminal law which existed, and he referred to it in the next place because it had the assent of the Law Commission, including the Judges as being a correct exposition of the law, and counsel did not see the necessity for travelling beyond it. (Mr. Pugh here quoted article 91, Page 55, of Sir James

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Stephen's Digest regarding the publication of seditious libels, and also article 93, which defined seditious intention). From this it would be seen that "seditious intention" was an intention to bring into disrepute or into contempt, or to excite disaffection against, the Government or the constitution of the United Kingdom, or to raise discontent or dissatisfaction among Her Majesty's subjects. There was nothing there about force, and any one or other of these would be sufficient for the purpose. The law in India is less complete than the law in England because it was an offence in England to incite feelings of ill-will and hostility between different classes of Her Majesty's subjects, but it was curious that, here in India, whether by oversight or whether because the Legislature considered the sections in the Penal Code relating to offences against religion would be sufficient to cover it, there was no such provision as in England against inciting feelings of ill-will and hostility between different classes of Her Majesty's subjects. In that respect writers in India had greater latitude than was allowed to writers in England; and he would further say here, because it was not impossible that his learned friend would try to show that there must be some direct appeal to arms, some direct appeal to rebellion, which the jury would remember the writer of these articles professed merely to dissuade them from adopting owing to their inability to rebel, that there were many cases in England referring to this question of promoting ill-will and hostility between different classes. There was, in particular, a case which would be relied on by Mr. Jackson, of the Queen vs. Burns, Hindman, Champion and Williams. They were members of a democratic society in London, present at a mass meeting of the society held in Trafalgar Square. There was at the time a meeting of the unemployed, and eventually they went down Pall Mall, and up St James' Street, and Audley Street, at the top of which they were dispersed. In that case these four persons were indicted for using seditious language, and the question, came before Mr. Justice Cave, who took exception to this last clause of the definition of Sir James Stephen as to setting class against class as being vague, and said that it depended upon the circumstances whether they would be liable to prosecution. Therefore the question was, with reference to this question of class there must be an intention to incite one class to use force against another. But that case was entirely different from the one now before them, because they had nothing in Section 124 A with reference to inciting class against class. There was nothing in the report to show what words were used by Burns and the others, but as far as appeared the Judge said with regard to Burns that he was a man who was very easily moved by the miseries of the unemployed, and that was taken in his favour. And with regard to Williams there was evidence with regard to him that he had told the crowd to go home, and advised them not to have recourse to acts of violence, and the Judge as well as the jury accepted that. That was what Mr. Pugh had to say with regard to that case, and it had nothing to do with this case or with this Section 124 A. In that case there was a large meeting in a public square, and a great portion of the people consisted of the unemployed, but a greater portion consisted of roughs who came to see what plunder they could get. But as Burns and the others were able to show before the Judge and the jury what their conduct at the meeting had been, they were not held liable for the consequences resulting from the action of the mob. Then, again, his learned friend might put before the jury other English cases with the dictum of one Judge or another with reference to the use of force being necessary. What Mr. Pugh said with regard to that

was this that all cases rested on the same ground, of inciting class against class. There was one case with regard to the Army, another with regard to words spoken or written against the Police; and one could quite well understand that speaking evil of the Police would not of itself be sedition; but if it was done with the object of causing people to become so disposed as to resist the authority of the Police, it might be an offence under one section or another of the Penal Code. But Mr Pugh thought the Police in Calcutta were subject to the very fullest cirticism, and imputations were continually being made against them. He mentioned these matters in order that the jury might estimate the remarks which might be made on the other side with reference to this question. Beyond that he did not propose to make any observations as to any speech that might be relied upon by the other side. There were no doubt reports in 1839 and 1847 with regard to this section, and the discussions which took place in Council when this section was brought out and when the Vernacular Press Act was enacted, and again when the Vernacular Press Act was repealed. But in the first place he need not go into all this, and, moreover, he was not entitled to do so, because these things could not possibly be taken into consideration in order to arrive at the meaning and construction of the section. He had told the jury that he would refer to the word "attempt"—whoever by words intended to be read attempted to incite." It would be said, no doubt, that there was an element of intention in this, and Mr. Pugh was not prepared to say but that there must be an element of intention. The jury would have to consider with regard to the intention. How were they to ascertain the intention. They could not possibly dig into a man's mind in order to ascertain what he intended at a particular time. All they could do was to look at the words he used to express his thoughts, and also to the attending circumstances.

REFERENCE TO ENGLISH CASES.

Counsel then referred to Article 94. Mr. Pugh had put before the jury the circumstances of the country when these articles were published, and he invited them to consider those circumstances in connection with the words used in those articles. When they took all the surrounding circumstances into consideration, he did not know how they were to get beyond that. The authority on which Sir James Stephen relied with regard to this portion of his digest was the case of the Queen against Sir Francis Burdett, which was referred on the ground of misdirection to the jury, when Mr. Justice Best said it was for the jury to collect the intention from the paper itself, unless it was explained by the mode of publication or any other circumstances. If at that period the criticism was likely to excite irritation and dissatisfaction, the intention must be presumed to excite what his act was likely to produce. Take the words and the attendant circumstances, and if the jury found that they were likely to induce sedition, that must be taken to be the intention. There were no other means of judging of intention. He, Mr. Pugh, might mention that Mr. Justice Holroyd in the same case said that, where a man indulged in the highest strain of invective for the purpose of influencing the public and raising in their minds disaffection, it was held that that in itself was a seditious libel. That was a clear pronouncement on the subject.

Mr. Pugh had said that he would not go beyond Sir James Stephen's digest, but there was one matter which he desired to point out, namely, that this case was absolutely covered by the case of O'Connell which eventually went before the House of Lords, and there the Judges were called and were unanimous as to certain of the counts being good counts, and Mr. Pugh

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relied on what was stated there, and what was found there to be a good count as showing conclusively what the law of England was. He would not trouble the jury with any further quotation but in that case the Chief Justice gave the opinion of the Judges where they were unanimous, their opinions being given seriatim as regards the counts on which there was a difference of opinion. That was a case of conspiracy but what the jury had to try here was whether what these articles contained was likely to cause disaffection among the subjects of the Queen, and whether they considered that it was attempted to be done by words intended to be read could make no difference. It was a conspiracy because it was unlawful. That was agreed to be the law, and had been accepted as being the law in England ever since that time. Mr. Pugh did not intend to detain them further at any length, because he had, to the best of his belief, put the articles and the state of the law before them. But there was one case which he could not pass over, though he was not going into any of the English cases, particularly the old ones. He would refer to a case which was most particularly suited for quotation in this particular case—the case where Alexander Martin Sullivan was tried before Justice Fitzgerald. There were several authoritative points to which the attention of the jury might be drawn here, but he was not putting it merely as a matter of law. Where, however, he found a case like this particularly opposite in all its bearings, it was right that he should put it bofore them. Now the condition of affairs as between England and Ireland he had adverted to yesterday, and they would bear in mind as regards Ireland that the law was exactly the same as in England. What Sulivan did was this. He was known for the zeal and amount of feeling he evinced with regard to what was known as the Manchester executions. Larkin and O'Brien were executed for the murder of a Police officer. Sullivan could not be charged as being a Fenian; he was stated by the Judge himself in his charge to have subscribed in the case of another constable who had been killed in Dublin; he was a man who was well known and highly respected; he was for many years a member of the House of Commons, but he went further than he ought to have gone being overcome by his feelings in regard to this execution, and he published in the newspaper he conducted an article reflecting on the English Government, and also introduced a particular picture of Ireland trodden down by England, and with respect to that article and the picture he was indicted. The passage Mr. Pugh would refer to was contained in the charge of the Judge (11 Cox's Report, p. 54). If the jury accepted that view he ventured to think they could have no doubt as regards the character of the particular publications before them. As to the part taken by the prisoners individually, he did not intend to go into that matter, because as far he could see the question they would be called upon to decide by the other side was, whether these articles fell within section 124 A, and he did not understand that any question was intended to be raised with regard to the discrimination of the articles among the public by these four persons, and with that belief he should not take up time with regard to the evidence of the dissemination and publication of the articles.

There was one more matter, and that was a passage which Mr. Pugh could not help reading to the jury, because it bore on the subject of the liberty of the Press, and he was quite free to ask them to consider these articles in the light of the principle laid down by the Judge, and nothing could be fairer than what the Judge said—he alluded to Justice Fitzgerald, who observed that in dealing with these articles the jury should not pick out an objectionable

sentence here or a strong word there. It was not strong or turgid language which should influence them. They should deal with the articles in a fair and liberal spirit. Every word of that Mr. Pugh would adopt. He did not rely on a particular sentence here or a particular sentence there in these articles or on any particular words. He did not rely on the fact that these articles were written in turgid language and in inflated sentences, but on the real spirit and meaning of the articles, allowing every latitude and looking at them fairly and liberally, and if they came to the opinion that the construction he put on them in respect of the meaning and intention of the articles they would have nothing to do but to find a verdict of guilty, and the verdict was guilty in this particular case of Sullivan, notwithstanding all that was spoken, and rightly spoken, in his favour.

CONCLUSION OF THE ADDRESS.

Then the last word he had to say was this. It might be that no witnesses would be called on the other side. In that case the prosecution would have an opportunity of summing up the evidence, but not of answering the arguments that would be used on the other side. And he asked them not to be led away by any impassioned eloquence on the part of his learned friend Mr. Jackson, but to endeavour, as he had asked them at the beginning, to preserve a calm and unimpassioned attitude in dealing with these articles, and to endeavour to come to a right conclusion, allowing every fair and liberal consideration to weigh with them in estimating the force of these articles. That was what he should wish them to do, and with these observations he proceeded to call evidence in the case.

The first witness called was Surut Coomar Roy.

Mr. Dunne. What is your name. A. Surut Coomar Roy

Q. Are you doing anything at present. A. No.; at present I am doing nothing.

Q. What was your last employment. A. I was employed in the *Bangobasi* Newspaper Office.

Q. When did you leave that employment. A. At the end of July last.

Q. How long were you there. A. For five years.

Q. As what. A. As despatcher, and in charge of the Editorial Library.

Q. Where is the *Bangobasi* Office. A. At 34-1 Colootollah Street.

Q. In Calcutta. A. Yes.

Q. Has the office been there all the time you were on the paper. A. Yes all along.

Q. The *Bangobasi* is a big paper; is it not. A. It is.

Q. It is published in Bengali. A. Yes, it is a Bengali newspaper.

Q. Is there a *Bangobasi* published in any other language. A. Yes there is also a Hindi *Bangobasi*.

Q. Where is that published. A. At the same office.

Q. You say you are a despatcher What do you mean by that. A. I have to send the *Bangobasi* by post to the Mofussil subscribers.

Q. About how many copies a week did you post. A. There were two of us, and we used to despatch copies to the mofussil, about 6,000 copies a week.

Q. Do you know how many copies were despatched weekly by post. A. Not the same number every week, the number varied each week.

Q. About how much. A. 12,000 to 13,000 copies a week.

Q. Besides those circulated in Calcutta. A. Yes, there were subscribers in Calcutta.

Q. What is the name of the other man. A. Prosonno Gopal Ghose.

Q. You were a clerk in the office. A. Yes.

Q. Is he another. A. Yes.

Q. As librarian what were your duties.

The Chief Justice.—He said he had charge of the Editor's library.

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Q. What is the Editor's library. A. I had the custody of all the books that used to be received in the *Bangobasi* office for review.

Q. What would you do with these books. A. I used to make them over to Kristo Babu.

Q. What Kristo. A. The Editor.

Q. What is his full name. A. Kristo Chunder Bannerji.

Q. Do you see him here. A. Yes.

Q. Is that he. A. He occupies a seat near Kally Babu, the man with the beard.

Q. Do you know Jogendro Chunder Bose. A. I do.

Q. What do you know him as. A. He was proprietor.

Q. Of what. A. Of the *Bangobasi*.

Q. Do you see him here. A. Yes, he is also here.

Q. Which is he. A. The person to the north of Kristo Babu.

Q. Who has been proprietor all the time you have been employed here. A. The same man, Jogendro Babu.

Q. And he has been Editor of the paper since you have been there. A. I have seen Kristo Babu acting as Editor, and I have also seen others.

Q. Do you know Brojoraj Roy. A. He is Manager.

Q. Do you see him here. A. Yes, the man to the south of Kristo Babu.

Q. Manager of what. A. Of the *Bangobasi* office.

Q. He has been Manager during the time you have been there. A. Yes.

Q. Do you know Aoorunodoy. Roy A. Yes.

Q. Do you see him here. A. Yes.

Q. What is he. A. He is printer of the *Bangobasi*.

Q. How long has he been printer. A. A little less than one year. I believe he has been there for the last five or seven months.

Q. What was he before. A. Formerly was head compositor.

Q. Where did Jogendro Chunder Bose live. A. He lived at Bhowani Churn Dutt's Lane.

Q. Did you see him attend the office of the *Bangobasi*. A. Yes.

Q. How often. A. Not regularly every day; he used to keep away when he was ill; otherwise he used to attend office regularly.

Q. Had he a room there in the office. A. Yes.

Q. You used to sit in his own room. A. Yes.

Q. Used Kristo Churn Banerjee to attend office regularly. A. Yes.

Q. Had he a room in the office. A. Yes.

Q. Used he sit in that room. A. Yes.

Q. I forgot to ask you, how long had Jogendro Chunder Bose been in Calcutta without being away. A. Without going anywhere?

Q. I mean without being absent from Calcutta. A. He goes to his native village off and on.

Q. When did he last go there A. He went to his native country the other day about a month and a half ago.

Q. Before that how long had he been in Calcutta without going. A. He used to go to his native country from time to time. It is impossible for me to remember all this. On one occasion he went to the N.-W. P. during Poojah holidays.

Q. When was that. A. In October last.

Q. What does the second accused Kristo Chunder Banerjee do. A. He writes in the paper.

Q. From whom do the compositors get slips for printing. A. I have seen them get copies from Kristo Babu.

Q. Where does he live. A. He lives in Seetaram Ghose's Street.

Q. What does Brojoraj Banerjee do. A. He is Manager. He keeps accounts of all money received or despatched on account of the *Bangobasi*. He receives monies and passes monies into the accounts, and does everything in connection with the *Bangobasi*.

Q. There are subscribers in Calcutta to the *Bangobasi*. A. Yes.

Q. To whom do applications for subscriptions come in the regular course. A. They come in the first instance to

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the Manager Babu.

Q. Under whose directions does he act. A. He acts under the Manager.

Q. Under whose directions do you act. A. I act under orders received from the Manager.

Q. And Prosonno. A. He also acts in the same way under the Manager.

Q. Who distributes the papers in Calcutta. A. Peons are employed to do this.

Q. How many. A. Six or seven.

Q. Who hands the papers over to them. A. They get them from the jemadar.

Q. Under whose directions do they distrbute papers. A. Hurry Hurr Babu, gives them slips and they distribute papers according to these slips.

Q. Do you know the handwriting of Brojoraj Banerjee. A. Yes, I do.

Q. In the papers you issue weekly through the post, do you make any entries in any books. A. Yes. The account is kept in the office.

Q. Look at this book, is it one of the books containing these entries. A. This is one of the books kept in the *Bangobasi* office.

Q. What is this book. A. It is an account of the number of papers sent to the Post Office.

Q. This is the counterfoil, of the book. A. Yes.

Q. What is done with the other portion. A. Sent to the Post Office.

Q. With the paper. A. Not with the papers generally, but they used to be sent last, and the papers are usually sent before.

Q. In whose handwriting are these entries I have shewn you. A. They are in the handwriting of Prossonno Gopal Bose. He is a clerk of whom I spoke before.

Q. Whose initials are these in the corner down here. A. The initials of the Manager Brojoraj Banerjee.

(Mr. Dunne tendered these entries of the 15th and 16th of May, and of the declaration sent by the Manager to the Post Office. They were found in the office of the paper.)

To witness.—Look at these entries of the 15th and 16th of May, in whose handwriting are they. A. There are three entries in my own handwriting and the fourth one in the handwriting of Prossonno Coomar Ghose.

Q. The first date, in whose handwriting is that. A. The first date is in mine, and the second in the handwriting of Prossonno Coomar Ghose.

Q. Do you see the signature in the corner, the initials. A. They are the initals of the Manager Brojoraj Banerjee.

Q. The other portion of the counterfoil is signed in the same way. A. Yes and sent to the Post Office.

Mr. Dunne tenders the exhibits marked *F2 of the 5th and 6th June.*

To Witness. In whose handwriting are these dates. A. The first is in my handwriting, and the rest in the handwriting of Prossonno Coomar Ghose.

Q. Do you remember how the initals happen not to be there. A. Of that I am not sure, I cannot say.

Q. Do the counterfoils of that go with the paper. A. Yes.

Q. Do the figures given on the counterfoils represent the number of papers sent out. A. Yes.

Q. On what date, used the papers to be sent out. A. Some of the papers used to be despatched every Friday and some every Saturday.

Q. I mean to say, do these entries show that the paper was sent out on the same day. A. Yes.

Q. Look at *this*; is this the counterpart of the entries you have spoken of. A. Yes.

Q. What are these documents. A. They are slips which used to be given to our coolies taking papers to the Post Office.

Q. Are these the signatures of Brojoraj Banerjee on these documents. A. They are all in the handwriting of Prossonno Coomar Ghose, except one which is in my own handwriting. He has signed the name of Brojoraj Banerjee.

Q. Can you tell me when you used to

sign the name of Borjoraj Banerjee who was present. A. We used to do that with the knowledge of the Manager Babu.

Q How do you know that. A. All the time I was there I used to see that the work was done that way.

Mr. Dunne tendered these entries as evidence.

Mr. Jackson objected to their reception, on the ground that they were not proved.

By the Chief Justice.—Had you the Manager's authority to do this. A. Yes, we had the authority of the Manager to do this.

Q. By Mr. Dunne.—Is this the counterpart of the document you spoke of before the 15th of May (M6). A. It is initialled by the Manager himself.

Q. Is this the counterpart of the entry you showed us in that book upon that date. A. Yes, in respect of the issues sent on the 15th and 16th May.

Q. What are these documents M to M5. A. They are slips.

Q. Whom are they sent with. A. With the coolies to the Post Office with papers.

Q. And by whom are they signed, A. The first two M's are signed by me. and the third and fourth are signed by Prossonno, M5 being initialled by the Manager himself.

Q. Were these signatures made under the same circumstances spoken by you before. A. Yes.

Q. What are these exhibits N., N. 11. A. Counterfoils signed by Prossonno Ghose.

Q. And are these entries of the counterfoils of the 5th and 6th June. A. Yes, of papers sent to the Post Office on the 5th and 6th June.

Q. These other documents, what are they. A. They are slips sent with the coolies.

Q. Were they sent in the regular course of business, signed by Prossonno Babu.

Mr. Dunne here tendered four documents, three of which were letters from the Manager to the Post Master, dated the 31st of July, and the fourth a declaration signed by the same Manager declaring that he was the Manager of the paper, where it was published, at what interval, etc, and the number of copies posted.

Q. What is this book, Q 2. A. The Calcutta peon book of the *Bangobasi* office.

Q. What do you mean by the Calcutta peon-book. A. This is Ram Surrup peon's account book.

Q. Is he one of the peons of the *Bangobasi*. A. Yes.

Q. Is he one of the peons who distributes the *Bangobasi* about Calcutta. A. Yes.

Q. Are the books kept by the peons in respect of the deliveries. A. I never saw these books in the hands of the peons.

Q. In whose hands did you see them. A. Books and kathas like these usually remain in Hurry Hurr's room I used to see them lying there.

Q. Hurry Hurr is one of the clerks. A. Yes.

The Chief Justice.—What is all this for.

Mr. Dunne.—It is to prove the delivery of these papers and the publication of them.

The Chief Justice.—You forget that defamation has gone out of the charge.

Mr. Pugh.—We are proving publication in respect of section 124 A., publication and the dissemination of it, and we have already given evidence of lending it through the Post Office.

The Chief Justice.—Surely there is enough here for your purpose.

Mr. Pugh.—I should be loath to give evidence of anything unnecessary.

The Chief Justice.—As far as I understand, you have proved the Editorship and Proprietorship of the paper, and you have also proved that a person in the position of a Manager sent 1,300 copies of this paper on these dates to subscribers in the Mofussil.

Mr. Pugh.—We propose to prove that three of these were copies marked A B & C, and to prove that the man who got the paper, was a subscriber.

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The Chief Justice.—I am in your hands, there is only a fortnight between this and the holidays.

By Mr. Dunne.—Is this one of the books of the *Bangobasi* office.

A. Yes.—There has been a translation made, a wrong portion of this book, and perhaps the Court Interpreter may be allowed to translate it.

Mr. Jackson.—As this is one of the books of the office, I object.

By Mr. Dunne to witness.—In whose handwriting is that second entry. A. I am not sure, I can't make out the handwriting.

Q. In whose handwriting is the book generally. A. I used to see it lying in Hurry Hurr's room; I don't know.

Q. Do you know this book. A. This was, I believe, the *Bangobasi* registry book.

Q. Do you know the book. A. I have seen this book in the same way with other books.

Q. Where have you seen it. A. In the office.

Q. With whom. A. I cannot say positively with whom.

Q. Look at this entry—in whose handwriting is this. A. I don't know.

Q. Do you know in whose handwriting the entry in the last column is. A. I was despatcher in the office. I have nothing to do with the accounts.

Q. Do you know the writing. A. No.

Q. Do you know this book. A. This is the Calcutta registry book.

Q. By whom kept. A. Hurry Hurr Babu.

Q. The registry book of the *Bangobasi*. A. Yes.

Q. Is that written by Hurry Hurr. A. The Calcutta registry book was in charge of Hurry Hurr Babu, and he knows by whom the entries were made.

Q. Under whom is Hurry Hurr Babu. A. Under the Manager Babu.

Q. Do you know in whose handwriting is this. A. No.

Mr. Dunne tenders this registry book.

The Chief Justice.—It has not been proved.

Mr. Dunne.—It has been proved that it is the Calcutta registry book of the *Bangobasi*, and it is kept by Hurry Hurr Babu.

The Chief Justice.—But he does not know the handwriting.

Mr. Dunne.—But the book has been proved.

To witness: Q. What do you mean by the Calcutta registry. Registry of what. A. A list of subscribers to whom the papers used to be sent in Calcutta.

Q. Who kept it. A. It was in charge of Hurry Hurr Babu, who used to make entries, but I don't know who kept it.

Q. What office was it in. A. The books used to remain in the office of the *Bangobasi* in the accounts department.

Q. Who was in charge of the account department. A. This book was kept in the accounts department, a department which was under the superintendence of the Manager Babu, who was the head.

Mr. Jackon.—Will your Lordship let me interpose with a question.—Have you had anything to do with the book. A. No. I had nothing to do with it.

Q. Had you ever seen it before until you saw it at the Police. A. I had seen the book on the table in the office.

Q. Had you any reason for thinking this was the same book, I mean as to its identity. A. It was a book like that.

By Mr. Dunne.—Look at these three copies marked A, B, C. Are they copies of the *Bangobasi* of the 20th March, 16th May, and 6th June. A. Yes, they are; but there is a mistake in the date of one copy which is dated the 6th May; it should have been dated the 6th June: the Bengali date is all right.

Q. There are similar issues of the same date. A. Yes.

Q. There are two copies of the 16th May. A. Yes.

Cross-examined by Mr. Jackson:—

Q. You say that Jogendro Babu is the proprietor of the paper; how do you

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know it. A. This is what I have heard.

Q. And this is your only source of information. A. I know nothing. I have no personal knowledge, and I only speak from what I have heard.

Q. Kristo Chunder Banerjee; how do you know that he is editor; is this from hearsay. A. I have seen him writing in the paper.

Q. Writing in the paper, what do you mean; seen him write in the paper. A. I have seen him write on slips of paper and hand them over to the compositors to be set up in type.

Q. And it is from that you conclude he wrote for the paper. A. Yes.

Q. In that office are there other people who do that. A. Yes there are others.

Q. Are they editors too. A. Of course when they write in the paper they are editors.

Q. About how many people have you seen writing slips and handing them over to compositors. A. About four or five people used to write.

By the Chief Justice.—In the office. A. Yes in Kristo Babu's room.

Q. Was it only in reference to these documents to the Post Office that you have seen Brojendro Raj Banerjee sign. A. Yes. With reference to the papers which were sent to the Post Office.

Q. And you never ventured to sign his name to other documents. A. Not that I remember.

Q. Was this done by anybody else. A. I cannot speak as to any other people.

Q. You are not aware of any one else doing so. A. Not that I am aware.

Q. You had nothing to do with the paper, seeing what was in it at any time. A. No.

Q. Can you tell me that the paper used to be printed late on Thursday night. A. Between eleven, twelve, and one o'clock on Thursday nights.

Q. Used it to be sent out on Friday to the Mofussil, and on Saturday to people in Calcutta. A. Yes.

Q. Do you know whether Kristo Churn Banerji had a house out of town A. He had.

Q. When used he to go there. A. Generally after finishing the work, on Thursday night, but not on all nights generally. During the day he used to leave by the one o'clock train.

Q. Was this the usual weekly custom. A. Generally he used to go to his native country, but occasionally he used to go to other places.

Q. Used this to take place every month for some, the months past. A. Yes, almost invariably.

Q. Besides the *Bangobasi* was there another paper published called *Dainik*. A. Yes.

Q. A daily paper, not a weekly. A. It was not a daily paper. It was published five times during the week.

Q. What were these five days. A. Sundays, Mondays, Tuesdays, Wednesdays and Thursdays.

Q. When he went away on Thursday, when would he return. A. On some occasions he used to return on Sunday, and on some others on Monday.

Q. Did you see the slips which were handed to compositors yourself, or did you read them. A. I have never read what was on the slips.

Q. Is the actual printing so far as you are aware of the *Bangobasi* and the *Dainik*, done in the same press. A. Of that I am not sure; they are published in the same office, but whether they were printed in the same press, of this I am not aware.

Mr. Jackson.—The practice under Justice Wilson and that of other Judges, has been for months that when any press evidence in the shape of documents is put in under cross-examination of witnesses for the prosecution, there is no right of reply.

Mr. Pugh acquiesced in this ruling, and the Chief Justice upheld Mr. Jackson, who continued his cross-examination of this witness as follows—

Q. Look at these three papers, they are issued in the *Bangobasi*. A. Yes, this one is an issue of the 3rd January 1891.

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Q. This is an issue of the same paper of the 18th April 1891. A. Yes, as printed here; there may be a mistake in the date.

Q. What is the Bengali date. A The 6th of Bysack on the face of it.

Q. This is one of the papers issued by the *Bangobasi* on that date. A. This is the *Bangobasi* of the 6th Bysack.

Mr. Jackson tendered these two papers as evidence.

The Chief Justice.—Have they been translated.

Mr. Jackson.—Yes, by the Court Translator at our expense.

The exhibits were admitted and marked 1 and 2.

Q. Look at this one of the 2nd May 1891. A. This is the *Bangobasi* of the 20th Bysack, or 2nd May. (Marked 3.)

Mr. Jackson with the permission of the Court here read translations of these three issues. (Copies of these translations were unobtainable.)

Q. Do you know who the actual printer of the *Bangobasi* is.

The Chief Justice.—What did you mean by the actual printer.

Mr. Jackson.—The real printer; the matter printer. He says that Ooronoo Roy is the printer. A. They are actually printed in the same press.

Q. Who is the printer. A. Oornnoo Roy.

Q. Do you know as a matter of fact, try and recollect whether or not, when he leaves the *Bangobasi*, and when he goes to office during the week, and whether he is there on Thursdays. A. That I cannot say, but I see him in the office off and on, but whether or not on any particular day I cannot say.

Q. There are a number of books printed in that press of various descriptions. A. Yes.

Q. Is the Press at the office. A. Yes.

Q. Do you know whether or not he looks after the printing of these books. A. I have not seen; I do not know.

Re-examined by Mr. Evans:—

Q. You were there for five years. A. Yes.

Q. Did you see Jogendro there during these five years. A. Yes.

Q. In whose employ were you during these five years. A. I served under the Manager Babu.

Q. Whom was he serving under. A. The Manager of the *Bangobasi*.

Q. Whom did he serve under. A. I do not know.

Q. Do you know to whom the Press belonged. A. I heard it belonged to Jogin Babu, the engines and everything.

Q. Did you ever see Jogin Babu do anything. A. Yes.

Q. What did you see him do. A. He employed himself with religious books printed in the office. He looks after the printing of these books.

Q. Have you ever spoken to him. A. Yes, I have.

Q. You said that your knowledge of Jogin being the proprietor was derived from hearsay. A. Yes, I have said so.

Q. Have you ever heard it from Jogendro himself. A. No. I have never heard it from Jogendro himself.

With regard to Kristo Chunder the editor, you mentioned the room as being Kristo Babu's room. Why do you call it Kristo Babu's room. A. It was known in the office as Kristo Babu's room, the editor's room, and was known as the editor's room.

Q. Was there any difference in rank or position between Kristo Babu and the others who went there. A. I did not see any, I did not observe.

Q. Can you give me the names of any others. A. Yes, Beharylal Sircar, Nundolal Bose, and Amrito Babu. I do not know his full name. There was also a Hindustani gentleman whose name I do not know.

Q. Did you know what Kristo Babu's salary was. A. I have heard he got Rs. 120 a month.

Q. Do you happen to know the salaries of others who sat in that room. A. No.

Q. Where is Kristo Babu's native country. A. A place called Srinibashat, in the Zillah of Nuddea.

Q. Kristo used to be there regularly from Sunday till Thursday, were the

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other people as regular. A. I used to see none of them on Sundays or Saturdays.

Q. Were they there regularly during the other days of the week. A. On other days they used to come, but not regularly every day. There was no rule about there attendance. They were not bound to attend every day.

Q. You have spoken about the *Dainik*, do you know whether there was an editor of the *Dainik*. A. I do not know who the editor of the *Dainik* was.

Q. Do you know who the editor of the Hindi *Bangobasi* was. A. I am not sure, but I believe it was Omirto Babu.

Q. What was the editor's room—for which editor. A. A room for the editor of the *Bangobasi*.

Q. You say that Kristo Babu was a salaried officer. Whose employe was he. A. I believe he used to get his salary from the Manager Babu.

Q. You don't know whom the Manager Babu got his salary from. A. No, I do not know.

By the Chief Justice.—What is your salary. A. I used to get Rs. 20 per month.

Q. Whose servant were you. A. I was the Manager Babu's servant.

The Chief Justice.—Everybody agrees to give up the manager to throw him overboard.

Doorga Das Lahiri, examined by Mr. Dunne, as follows :—

Q. What are you. A. I am the Editor and proprietor of the *Unooshandhan*.

Q. And you live at 8, Amherst Street. A. Yes.

Q. Do you know the *Bangobasi* newspaper. A. Yes.

Q. Are you in the habit of receiving it. A. Yes.

Q. Regularly. A. Yes.

Q. You exchange it for your paper. A. Yes.

Q. How long have you been receiving it. A. For four years.

Q. Do you know the office of the *Bangobasi*. A. Yes. It is at 34-1, Colootolla.

Q. During the last four years have you been in the habit of visiting the office. A. Yes

Q. Do you know any one of the staff of the paper. A. I do.

Q. Whom do you know. A. I know all four accused. Jogendro Chunder Bose is the proprietor, Kristo Chunder Banerjee is the Editor, Brojoraj Banerjee is the Manager, and Aroonodoy Roy is the printer and publisher.

Q. If you went there on business, whom did you go there to see. A. I used to go there on business to give books for review and to purchase books.

Q. When you went there to give books for review whom did you see. A. Whenever I went I used to see every one, but generally I used to give the books to Kristo.

Q. And when you went to give advertisements. A. On these occasions I used to see Kristo.

Q. With whom did you make the arrangements. A. With him.

Q. By whom were the advertisements taken. A. They used to be taken by the advertisement clerk.

Q. In what part of the premises used you to see Kristo. A. I used to see him in the Editor's room which was on the east side of the premises.

Q. Did you ever go to see him except on business. A. I believe I did but I have no positive recollection.

Q. Now with regard to Jogen, when did you see him. A. When I went to the office I used to see him on the north-east side of the premises in the room.

Q. What did you go to see him about when you went to see him in the room. A. About the purchase of some books.

Q. Were you on visiting terms with the persons you have mentioned. A, Yes, I used to see them, but not regularly.

Q. Which of them. A. All except the printer.

Q. You were on visiting terms. A. Yes.

Q. How long have you known them.

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A. For the last five or seven years.

Q. How long have you known Oroonodoy. A. About a year.

Q. You say you used to receive the *Bangobasi* regularly. Just look, do you remember receiving a copy of that. A. Whether I receive this very copy or not I cannot say, but there is an article in this which I have read.

Q. You read it in the copy that you received. A. Yes.

Cross-examined by Mr. Jackson :—

Q. How often have you seen Kristo within the last six months. A. Two or three times.

Q. Where. A. On one occasion I saw him at the junction of the Central Road and College Street.

Q. And other times. A. And on another occasion I believe either in College Street or Mere Jaffer's Lane.

Q. And any other occasion. A. I recollect these occasions only.

Q. Did you see him within the last six moths in the office. A. I do not recollect if I did.

Q. Jogen, you said to Mr. Pugh, was the proprietor. How do you know, you heard it or what. A. That is my impression or belief. From the nature of his work I came to the conclusion that he was the proprietor.

Q. Will you kindly tell me the nature of the work which led you to the conclusion. A. I know when Upendra and Jogen were proprietors, and when Jogen became sole proprietor.

Q. I don't want to know *that*; are you sure of this. A. I know that there were other proprietors before.

Q. Is this the sole reason. A. Yes.

Q. Will you kindly tell me how you came to know that Upendro and Jogen were proprietors. A. I heard that they had started the business together.

Q. Was what you heard your sole source of information. A. Yes.

Q. And there is nothing else to lead you to that belief. A. Jogen used to remain in the room in the office, and that confirmed me to the belief.

Q. Now you have said to Mr. Pugh to-day that you used to see him with regard to books. I want to know whether or not you said this, "I don't know whether or not I visited the first accused on business." A. Yes, I did say that.

Q. And that was at the Police Court at an early stage. A. Yes.

Q. And your memory would be fresher. A. It is the same now.

Q. It was nearer to the time than it is now. A. Yes.

Q. At that time you were simply examined by Mr. Pugh and not cross-examined. A. Yes.

Q. It was in answer to Mr. Pugh you said that the person with whom you transacted business was the Manager. A. Yes, I transacted my advertisement business with the Manager.

Q. And the other business. A. When I went there with books for review I used to make them over to Kristo; when I went to purchase books I went to Jogen.

Q. That is all the business you went to transact. A. That was not all the business I went to transct.

Q. You cannot recollect anything else just at present. A. No.

Re-examined by Mr. Evans :—

Q. You knew Upendro. A. Yes.

Q. Where used you to see him. A. In the office and also in the street.

Q. During the last six months have you been to the office. A. I believe I may have gone there once or so.

Chundernath Bose, examined by Mr. Dunne :—

Q. What are you. A. Bengali Translator to the Government.

Q. What particular office do you belong to. A. To the Bengali Translation Office to the Government of Bengal.

Q. Newspapers come to your hands for the purpose of translation. A. Yes.

Q. It is part of your duty to translate. A. Yes.

Q. You know the Bengali newspaper the *Bangobasi*. A. Yes.

Q. Does that paper come to you.

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A. Yes.

Q. It is supplied to you personally or to the office. A. To the office.

Q. Is that under any arrangement. A. I know of none.

Q. How long have you been in your present position. A. For about four years and a half, I went into the office on the 1st January 1887.

Q. Since what time has this paper come to your office. A. Since my joining.

Q. When does it come to the office. A. Once a week. It is delivered on Saturday.

Q. How soon after delivery does it come into your hands. A. The same day.

The Chief Justice.—When you come there in the morning. A. Yes, I find it there when I arrive.

Q. You receive other papers. A. Yes, many others.

Q. They are to wait there till you come. A. Yes.

Q. But some come in when you are there. A. Yes.

Q. When you read do you make any remarks on them. A. Yes.

Q. Just look at these three papers and say whether they came to your office. You have seen these papers before. A. Yes.

Q. Have they been read by you in the course of your duties. A. Yes.

Q. Are there any marks by which you identify them. A. There is a mark on the outside and there is tick mark.

Q. This was made by you. A. Yes.

Q. What does it mean. A. It means that I have read the paper.

Q. Are there any marks on the others. A. Yes, the same marks.

Q. Inside these papers there are a number of marks A. They were made by me when I read the paper.

Q. How long after. A. Within an hour, certainly within the day.

Q. When they were read by you what did you do with them. A. I made them over.

Q. After you make them over what becomes of them. A. They are filed.

Q. Do you keep a file of these papers. A. Yes.

Q. By whose orders. A. The Under-Secretary Mr. Luson.

Q. Have you got with you the issues of the 30th May, 13th April, 23rd March, 27th June, 11th July, and 1st August A. Yes.

Q. From what place have you brought them. A. From the file in my office to which they must be returned. They have been brought from the office records.

Q. Do you get copies of these dates in your own office. A. Yes.

Q. Did you get them from the file A. Yes.

Q. When. A. When I took the other papers.

Q. To whom did you give them A. To Mr. Luson.

Mr. Dunne here tendered these six articles which were admitted.

Mr. Jackson enquired whether these were the articles, translations of which had been received by the defence.

Mr. Dunne continued to examine:—

Q. You translated certain articles in this paper. A. Yes.

Q. Please point out the articles. (Witness here pointed them out.)

Q. Are you acquainted with the Bengali and English languages. A. Yes.

Mr. Dunne asked to be allowed to put all the articles in, but his Lordship thought that they had better be proved one by one. This procedure was followed, and Mr. Evans then read the articles *in extenso*. The examination of witness was continued as follows:—

Q. Do you know Jogen. A. Yes.

Q. Do you know the office of the *Bangobasi*. A. Yes.

Q. Have you ever been there. A. Yes.

Q. Have ever seen Jogendra. A. Yes.

Q. For what purpose did you go there. A. I went there more than once. I cannot say for what. I went to purchase something about a year and half ago, and I then saw Jogen.

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Q. Where did you see him. A. In one of the rooms of the house.

Q. You mean the office. A. Yes, at 34-1 Colootolla.

Q. On that occasion when you went there and saw him in the room, what did you say to him. A. I asked him for twelve copies of the *Bangobasi*.

Q. What did he say or do then. A. He ordered one of his men to give me the 12 copies and they were given to me.

Q. Do you know Kristo. A. Yes.

Q. Have you ever seen him there. A. Yes.

Q. Have you ever spoken to him. A. Yes I think so.

Q. How long have you known him. A. About three or four years.

Q. Have you seen him doing anything there. A. I have seen him correcting proofs.

Q. Where. A. In that room where I saw Jogendro.

Q. Was he in the room at the time. A. Yes.

The Chief Justice enquired whether Mr. Jackson would be long in cross-examination, and on being assured that the cross-examination of this witness would extend over an hour and-a-half, his Lordship ordered the Court to rise for the day.

THIRD DAY, FRIDAY, AUGUST, 21.

On the case being resumed to-day, Chunder Nath Bose was further cross-examined by Mr. Jackson:—

Q. How long have you been Government Translator. A. About four years.

Q. Where were you before. A. I was librarian of the Government Library.

Q. How long have you been altogether in Government service. A. Thirteen years.

Q. Previous to that, where were you. A. I was Principal of the Maharaja's College, Jeypur.

Q. Have you, as a matter of fact, translated the articles which are the subject of this charge. A. They were not translated by me.

Have you seen the translations. A. I have seen the articles, but not the translations.

Q. As a matter of fact, can you say whether the articles are comparatively easy to translate, or is difficult to express in English the full force of the Bengali. A. Rather difficult.

Q. What might in Bengali be a term of entreaty, might be rendered in English as terms of command. A. Not necessarily.

Q. In your opinion are these articles such as the ignorant and uneducated could understand. A. There are portions of them that an ignorant man might understand.

Q. Taking the articles, as a whole, are many of them clothed, as far as the Bengali language will allow, on poetic phraseology. A. Yes, there are portions so clothed.

Q. Are the articles such as in your opinion ignorant and uneducated men would take up to read at all. A. They might take them up to read.

Q. Are they of the kind which such men would like to read. A. I am not so conversant with the reading tastes of the ignorant people as to be able to say whether they would take up these articles or not.

Q. Will you turn to the translations set out in the charges (page 15). A. The article headed "The Revealed Form of the English Ruler." Then turn over to page 16, the Sanscrit quotation taken from the 11th Chapter of the Bhagabat Gita. Are those quotations from the Bhagabat Gita. A. don't exactly remember.

Q. Do you believe it to be so. A. I think from the sense as given in English it is so. I am not myself a Sanscrit scholar, but I have a Bengali translation of the work, and it appears to me that they must be slokas from that book.

Q. It is a book regarded in the hightest veneration by the Hindus. A. I think so.

Q. Is Bishwarupa manifestation of the all-prevading god head. What would you understand by Bishwarup. A. Universal form. Hindus frequently speak of the Almighty as the God-creator, God-preserver, and God-destroyer.

Q. Now will you look at page 16

again, beginning with the words "at the very sight;" that is, language addressed by Urjun to Krishna. A. Yes.

Q. The quotation as it stands is not only not disrespectful and derogatory, but positively a qualified form of address by a devotee. A. I think so.

Q. Then will you kindly read the passage beginning with "O! Lord of the Gods." Is not that an application to the English of the previous paragraph in Sanscrit. A. I think it is not an exact application. It is a mixture of satire.

Q. What is the passage you particularly rely upon for the purpose of showing satire. A. The passages beginning with "you, who call yourself civilized," and ending with "proclamation full of policy." These are some of the passages.

Q. To understand these articles a person would have to be acquainted with the Shastras. A. I don't think so. The acceptation of the God-head and other such matters will enable many people to understand such writings.

Q. How were you chosen translator for the new articles and not for the old ones. A. I don't know.

Q. How do you put in Bengali whether it was an entreaty or a request. A. It would be indicated by the tone of the voice; some words might be used, both as an entreaty or request.

Q. There are numerous instances of the same thing in Bengali. A. I think they are.

Q. Can you tell me the Hindu proverb with regard to the Kingdom suffering for the sins of the King. A. Yes. It is "Raja papee, preja nosto," which means that the subject is ruined for the sins of the King.

Q. That has grown up with the Hindus in all their ideas of famines and other things as punishments sent for the sins of the Kings. A. That is not the exclusive idea, but it is connected with it.

Q. Have you read books that existed before the English rule. A. Yes, I have read some.

Q. Have you found that idea expressed long prior to the British rule. A. I cannot recollect.

Q. You are yourself an Orthodox Hindu. A. I am.

Q. In your opinion, does the Age of Consent Bill clash with the Shastras and the religious rites and ceremonies of the Hindus. A. I think it does.

Q. Is it in your belief an interference with the Hindu religion. A. It is.

Q. Am I to take it that many people you are acquainted with have been greatly moved by the passing of the Act. A. I cannot say many people, for I don't know many, but some I know are moved by it.

Q. People whose loyalty is undoubted. A. I think so.

Q. Marriage occupies a very peculiar relation among Hindus, thoroughly bound up with their religion, and much more interwoven into their whole life than among any other nation in the world. A. Yes.

The Chief Justice.—As far as you know?—Yes.

Q. Is it a part of his spiritual life. A. I think so.

Q. Is it the Hindu's belief that the Age of Consent Bill will have the effect of lowering the standard of female morality. A. I have seen it so stated by some people.

Q. Do you believe it. A. Yes, I do.

The Chief Justice.—The effect of the Age of Consent Bill will be to lower morality?—I cannot say that. They say that if the effect be to raise the age of marriage, then there must be a lowering of the Hindu standard of morality.

Q. Mr. Jackson.—I put it to you again, in your opinion is the Age of Consent Bill calculated to lower the standard of female morality. A. There can be no absolute judgment.

Q. I ask your belief. A. It is calculated to lower that standard.

Q. Is it in your opinion calculated to cause a veritable break up of your homes and society and unspeakable moral disorder and confusion everywhere. A. I think so.

Q. People have spoken to you very strongly on the subject. A. Yes.

Q. Yesterday you said you saw Kristo

correcting proofs. Did you read those proofs. A. No.

Q. Are you aware that there are two presses in these premises. A. Yes.

Q. You said yesterday that Jogeswordered his servant to bring twelve papers. A. Yes.

Q. You thought the man was his servant merely from being told to bring papers. A. Yes.

Q. Beyond that, who or what he was you don't know. A. No.

Re-examined by Mr. Evans:—With regard to ignorant and uneducated people, you include those who have no English education. A. Yes, of course, they are the chief.

Q. Are they, as a rule, religious or not. A. I think they are more religious than the English educated.

Q. The story of Krishna and Urjun comes from the Mahabarata, and the other story from the Bhagabat Gita. A. Yes.

Q. There are no stories more familiar to the Hindus than the Mahabarata and Ramayana. A. Yes; they are very popular they are more known to Hindus than the Bible is to most Christians.

Q. Are illiterate Hindus familiar with these stories. A. I think they are.

Q. Did you ever meet a Hindu who, whether he could read and write or not, would not recognise the allusion to Ravana. A. I don't think I have ever met such a Hindu.

Q. Are expressions connected with Ravana used in ordinary discourse: is it common to allude to them. A. Ravanspuri is a common allusion to a very large family. Ravana had a very large family.

Q. Are these ideas with regard to religious meditation giving you a true insight enabling you to see the truth common among the Hindus, learned or unlearned. A. It is not a common idea among Hindus.

Q It is not usual for them to practise it. A. No, it is not.

After the quotation in Sanscrit and the Bhagabat Gita do you see the words "Brohmoraksha."

Q. Who was Raksha. A. Rakshasha was a demon, and Brohmo Rakhsha is a demon that had once been a Brahmin.

Q. What you speak of as a satire here, is it accentuated or diminished by beginning with an invocation to a diety. A. It is aggravated by an invocation to the true diety.

Q. You were asked with regard to expressions in the Bengali language which might either be words of entreaty or command according to the tone. A. Yes.

Q. Supposing those expressions were in writing, how would you judge. A. I think I would judge by the context.

Q. As to the Age of Consent Bill, the point is the raising of the age from ten to twelve. A. Yes.

Q. Before that Bill the age was ten. A. Yes.

Q. Among Hindus marriage itself is performed when girls are very much younger even than ten. A. Yes.

Q. Some times as young as five or six. A. Yes.

Q. More generally eight. A. Yes.

Here Counsel examined witness on some details regarding the Age of consent Bill.

Q. Can you tell me whether the Jeypur people are orthodox people. A. I don't know much about them. I was only two months there. Most of them practice the Vaishna religion, which is not the usual religion here.

Q. They are not orthodox Hindus according to Bengali idea. A. We would call them orthodox, but their practices and ceremonies are different. They are orthodox in their own way. Both regard each other as orthodox.

Q. Are there many Vaishnas here. A. Yes.

Mr. Jackson asked permission to be allowed to put the following question through the Court:—Do you know from your own knowledge whether many Hindus object to the Age of Consent Bill.

The Chief Justice disallowed the question.

Hemlall Dutt was then examined by Mr. Dunne:—What are you.—A zemindar.

Q. Do you know 34-1 Coloottolla Street. A. Yes, it is my house, and it

is let out to Jogendro Chunder Bose.

Q. Have you got a lease. A. There are four agreements. He first took my house in 1884 along with Upendro Chunder Sinha Rai. I did not see Jogendro at that time. I saw him subsequently. I don't remember when, but it was in 1884.

Q. When did you see him again. A. When the lease was renewed about a year ago, and he asked for a new room to be built.

Q. Do you know his handwriting. A. No.

(The leases were here marked for identification.)

Girish Chunder Bose, examined by Mr. Pugh:—Do you know Jogen, the first accused.—Yes.

Q. Do you know his handwriting. A. The signature in this lease is his, I believe.

Q. Do you believe the Bengali signature to be his. A. It looks like his handwriting, but I am more familiar with his English signature than Bengali.

Q. What do you believe with regard to this Bengali signature. A. I believe it is his.

The Chief Justice.—You may take it that these leases are leases letting the premises for the purposes of a printing office.

Robert Newman Vears, examined by Mr. Pugh:—What are you.—I am head clerk in the correspondence branch of the Calcutta General Post Office.

Q. Do you know Kristo. A. Yes, I have seen him several times at the General Post Office in connection with the privileged posting of the *Bangobasi*.

Cross-examined by Mr. Jackson. Have you any specific recollection to seeing him with regard to the *Bangobasi* or any other paper.—Specially with regard to the *Bangobasi*.

Q. Can you recollect the date A. I cannot, but it was about October or November last.

Q. Was that the only occasion. A. I have seen him several times, but I cannot recollect in particular the occasions when he came. It was always with regard to the *Bangobasi*, never with regard to any other paper.

Q. October or November last year was the last time you saw him. A. Yes.

Mr. Pugh here tendered the following witnesses for cross-examination:—Bunkim Chunder Chatterji, Hem Chunder Nag, Gossie Das Ghose, Surut Chunder Pyne, Narain Chunder Bhuttercharji, and Superintendent Lamb.

William Robert Lamb, cross-examined by Mr. Jackson.—You searched the premises 34-1 Colootollah. A. Yes.

Q. Mr. Bernard was there. A. Yes.

Q. You placed at the disposal of the Government all that you found there of any importance. A. All the books and papers I found I made over to the Court.

Q. The Government Solicitor has seen them all. A. Yes.

Mr. Pugh here put in the authority given by the Government for the prosecution, which was signed by Sir John Edgar, Chief Secretary to the Government of Bengal, and re-called Chunder Nath Bose to prove the signature.

Q. Do you know Sir John Edgar's signature. Is this it. A. It is spelled like it, but I am seldom able to read his handwriting.

Mr. S. E. J. Clarke, Secretary to the Bengal Chamber of Commerce, who happened to be present in Court, was called and examined by Mr. Pugh.

Q. Do you know Sir John Edgar's signature. A. Yes.

Q. Look at this, is it his signature. A. It is.

Cross-examined by Mr. Jackson. How came you to be here?—I came in to see what was going on.

Q. When did you last see Sir John's signature. A. I saw a letter from him only this morning addressed to the Nawab Bahadur of Murshidabad.

Q. Are you working under the Nawab—A. No, I am a friend of his, and he showed me the letter.

Q. Have you had any opportunities of seeing his signature before. A. Yes.

Mr. Pugh then tendered the order of Government, signed by Sir John Edgar sanctioning this prosecution.

Mr. Jackson said that this did not seem to be the order of the Local Go-

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vernment. The person who was bound to give the authority should have signed immediately below the words "by order."

The Chief Justice did not think that there was any magic in the words "by order."

Mr. Jackson asked how would the Court supply the authority. He submitted that the matter was of considerable importance, and that formal evidence of this kind should be strictly proved. Under Section 195, C.P.C., where there was a sanction given by a Court to prosecute for perjury, the order had to be carefully drawn. There was not a single word in this document about the authority of the Local Government, and he submitted that this was a bad order altogether for instituting the prosecution. There should be no difficulty in getting a proper order.

The Chief Justice thought it was a sufficient order within the meaning of the section. Mr. Pugh here closed the case for the prosecution.

Mr. Evans' Summing up.

Mr. Jackson, having stated that he did not intend to call any witnesses, Mr. Evans then summed up the evidence as follows:—He reminded the Jury of the exact words of the section, so that they might form a clear conception of the terms of the law under which they were asked to convict. The section was directed against persons who excited or attempted to excite feelings of disaffection towards the Government established by law in British India, by words intended to be read. First, assuming that there were matters in these articles that would excite disaffection, he would have to show that the Crown had given sufficient formal proof that these accused persons had so much to do with these published words as to enable the Jury to say that they made an attempt to excite disaffection. He would have to show afterwards that the words were calculated to excite disaffection. But at present he assumed that. Assuming that the words were such, there was evidence first of all to prove that the accused Jogendro Chunder Bose was the proprietor of the paper. He thought they would be satisfied on that point because it was well proved that he was the tenant of the place, and the owner of the press, and had a room there, and was there almost every day, and the first witness, having been employed for 5 years, also spoke of him as the proprietor. And although in cross-examination he stated that his knowledge was hearsay, that was to a certain extent the case with every clerk in the office of the Jurymen there present. But they could not but take into account as a material circumstance the fact that this man was in the employ for 5 years, and saw the proprietor every day. Then there was the evidence of the other man that he knew Jogendro for years, that he was on visiting terms with him that he had constantly been there at the press, and that he always understood that he was and treated him as the proprietor. Nobody could say more with regard to many of the members of firms in Calcutta. They had never seen the purchase deed; but they were in the habit of going there and dealing with them as proprietors. There was not a suggestion made on the other side that anybody else was proprietor, and Mr. Evans thought that the Jury would be well satisfied that they would be making no mistake, as sensible men, if they came to the conclusion that Jogendro Chunder Bose was the tenant of the house, the proprietor of the press and of the newspaper. The people under him were the manager and the editor, and they were apparently salaried persons, and it was pretty evident, therefore, that they received their salaries from him. The position of the editor also was tolerably well defined, the despatcher spoke of him as the editor, spoke of his room as Kristo Babu's room, and had seen him performing the work of the editor. Then there was the editor of the other newspaper, he had constantly visited him on the business of the *Bangobasi* and handed over books to him for re-

view, and during a considerable period of time had known him as the editor. Then there was also the evidence of the last witness that he saw him several times at the Post Office regarding the remission given by the Government to newspapers, and that it was with regard to the *Bangobasi* that he came. Then there was the manager, Brojoraj Banerjee, with regard to whom there was any amount of proof. He kept the accounts, superintended the Despatch Department, and generally acted as manager of the paper. With regard to the printer, Mr. Evans would remind the Jury that no persons were allowed to print papers in this country without making a declaration before the Magistrate, as regards the particular works which they had to print; and as often as the printers were changed a new declaration became necessary, and an authenticated copy of that declaration could be obtained and in any legal proceeding the production of a copy attested by the seal of the Court empowered to have the custody of the document would be held to be sufficient evidence as against the person described in the declaration as the printer and publisher or printer or publisher. The person described in the declaration put in was Brojoraj Banerjee, and therefore the prosecution need not give any other evidence. The Jury had to consider what the position of these people was with regard to dissemination. The words of the Act were "by words intended to be read, excites or attempts to excite feelings of disaffection." If words were printed for dissemination, sent out to the people to be read, the man who did that thing attempted to excite whatever feelings the publication was calculated to excite. It was quite plain that a man was taken to intend the natural results of his acts. Mr. Evans would take these people seriatic. First as regards the proprietor, he did not think, if the Jury was satisfied, that this man was proprietor, and when they came to consider the nature of the articles, a long series which was made longer and more complete by those three articles put in yesterday, that they would hesitate to come to the conclusion that they were intended to excite feelings of a certain sort amongst the readers. On the 31st of January, this paper was apparently controlling some demonstration about to be made or a peculiar character before the Age of Consent Bill was passed. Then they would find that after the Bill was passed they were writing articles regarding a great meeting to be held, and again in an article on the 18th of April giving notice of postponement of the meeting on the ground that the Government were in trouble in regard to the Manipur affair, and in another article of the 2nd of May which was put in by the defence, it was stated that steps were then to be taken, and that the agitation must be continued, and they must put their trust in Krishna, Mr. Evans thought that the proper way to consider these consecutive articles was that they would not be allowed to appear without the assent and active consent of the proprietor.

This seemed to be the position of the proprietor. As regarded the editor, he appeared to be a person who actually looked after the insertion of the articles, and Mr. Evans took it, that although he may have received orders from the proprietor with regard to the line the paper wished to take, he must have actually aided in causing these articles to be sent out and published. But whether he wrote them or not was not known because the name of the writer had not been given up; and the prosecution had been unable to get any information on this point. But it was clear under the circumstances that he caused or assisted in these articles being printed and being issued, and the editor would be a person who making attempts to produce whatever effects these articles were calculated to excite. These would be the two principal men, and no doubt would be the persons who would be mainly responsible and would be most heavily punishable in case the indictment was

proved. As regarded the manager and printer, the case was somewhat different. The first was stated to have had charge of the Accounts Department, and was the general manager of the paper, and in the case of men like this it would be very hard to attribute so much blame to them. But having regard to matters which were before the Jury, and having regard to the fact that these were deliberate proceedings, in reference to which he would presently deal in connexion with the Age of Consent Bill, it would be for the Jury to consider whether the manager did not know what kind of paper he was managing and what kind of stuff he was printing and sending out. The circulation was large, 13,000 in the mofussil alone, and if the Jury thought that the manager knew what he was doing in sending these articles out, then it was very difficult to see that he was not attempting to excite certain feeling. The prosecution had proved the sending out of the issues on the three dates mentioned. As regards the printer, his case was somewhat different, but with regard to him he took it that if a printer put up and printed seditious matter with the knowledge that it would cause disaffection amongst the people, he must take the consequences of his own acts. Of course the criminality of people like these was of a different stamp to that of the principal offenders.

Then as regarded intention, it must be remembered that intention was one thing and motive was another. If a robber went into a man's house with intention to rob money, and struck the owner with a knife, the intention of that robber was gain, but it could not be said that he did not intend to kill the man. Therefore, one must always distinguish between motive and intention. Of course one could see that what would be urged would be, that the motive of the printer and editor was a religious one—to defend their religion. As regards that, the partial cause of the Mutiny itself was according to them "dharma" or religion; and yet, although a man's motive might be to defend his religion or maintain some principles of importance in it, yet if he did act which were calculated to endanger the state or exexcite disafiection, however high his motive might be, that would not save him. As regarded that, the Jury would have to remember that, if by any writings of an editor he incited the people to acts of lawlessness, he did none the less commit the crime of intentionally giving rise to sedition because he did it for his ordinary wages. Therefore he asked the Jury to come to the conclusion, having seen the character of the articles which the Crown had prosecuted upon, that these men were guilty of attempts to excite the feelings which the dissemination of these printed words would naturally excite.

Having said so much with regard to the position of the formal evidence, he would now come to the real matter in the case, and that was the question whether these articles did, as a matter of fact, come within Section 124A. of the Penal Code, and whether sending them out among the people was an at attempt to create disaffection of was within the explanatien of that section. After reading the section, counsel went on to say that although the word was somewhat wide and vague, "disaffection" meant to feelings of hatred and contempt to the Government as opposed to loyal and frinedly feeling. There might be disapprobation of the action of Government with regard to certain measures, and this it was absolutely necessary to allow expression to. It was necessary for the freedom of the press and always considered necessary by Englishmen wherever they went. This freedom of the press was never extended to India till the year 1835, since when the press was able to express itself with the same freedom as the press of England. He would have to place before the Jury a short analysis of these articles, and would first refer to the one of the 31st January, which was entitled "The Triumph of Loyalty." This article contained a reference to the Brahmin who called upon his hearers at that

meeting to leave this accursed land with all their wives and families. The Chairman calmed him down, and told him that they were all loyal, and that it was not necessary to act in this manner. On the 31st of January there was before the Council a bill which afterwards became the Age of the Consent Act. This bill was nothing more than this—it appeared that when the English came to this country it was found necessary to put some limitage owing to infant marriages below which consummation would be dealt with as the rape of a wife by her husband. In England the marriages were between grown up people, but in India the case was different. As people were in the habit of marrying girls of five or six years of age, who were not allowed to go to their husbands before they attained puberty, the first limit was eight years. This age was raised to ten, and the law said that if a man had connexion with his wife before she was ten years of age, he was guilty of rape under any circumstances. There were instances of girls being mothers at that age. This did not trouble Hindus very much, but when Government proposed to raise the age from ten to twelve on the ground that there were frequent instances of very lamentable consequences arising from these connexions, there was a very strong opposition raisd, and the Jury had heard what the translator had said on this point. It was also well known that the Hindus themselves were not unanimous in this matter; that there were large numbers in Bengal and other Presidencies who took the same view as Government. The Maharaja of Jeypur actually passed a law prohibiting intercourse with girls under fourteen. A man's religion was what he believed in, and it was no use telling any man that the religion he believed in was wrong. There were also people who wanted to interpret the Queen's proclamation as positively disabling the Government from interfering with anything which anybody considered to be a matter of religion in any connexion, and the Government said, No. They said that they relied upon that principle on which they passed the Suttee Regulation—a practice which was believed by a large number of Hindus to be a religious act. The English Government hesitated for a long time to put a stop to this practice, and he believed that it was Lord Amherst who declined to interfere. But Lord Bentinck passed the Suttee Regulation in 1829. In passing that regulation, it was said that the Government had no intention of departing from one of the first and most important principles of the system of Government in India, which was, that all classes of the people should be secure in the observance of their religion in accordance with the dictates of reason, humanity, and justice. The Hindus got up an immense petition to Government at the time, who referred it to the Privy Council the latter reported upon it saying that the measure could not be regarded as a departure from the just and established principles of religious toleration, which had been observed, and upon which the permanence of the British Government mainly depended. The attitude taken up, then, was that there was no desire to interfere with the religion of the country, but that in the case of suttee, although some people claimed a religious sanction for it, the practice was contrary to the dictates of justice and humanity, and was a flagrant offence against society. This was the position, and the Government came to the conclusion, having regard to the want of unanimity amongst the Hindus, that, under the circumstances, it was necessary to treat the doing of this thing as a crime of the same way as Suttee. It was then that this paper started upon a career which he would briefly lay bebefore the Jury—a career which he thought the Jury would find to be this. First of all, when they found that, notwithstanding the representations which were made, the Government took the position which they did, they determined to agitate for the repeal of the Act. They proceeded to vilify the Government in every possible way; they proceeded to misrepresent statements made

by the Government to ignorant people, and to represent that their liberties and their religion were under the whim and caprice of foreign rulers. They abused the Governor-General in every possible way, introducing even the word "Mlecha," which there was not a Rajah in India who would dare to use to the Viceroy in his presence. Of course, Mr. Evans was not depending upon the use of this or any other particular word, but upon the general character of the articles. They started upon this career to try and arose the people, not by discussing measures, but simply by making assertions and scattering them broad-cast amongst the people, attempting to inflame Mohamedans as well as Hindus with the idea that the Government had made up its mind to abolish the Hindu religion. Then the form of these articles was very peculiar. In many cases they represent themselves as making mock humble addresses to their rulers such as "Oh Prabhu," containing the bitterest insults and invection. They endeavoured to excite in the minds of the people feelings of the bitterest hatred and contempt of the Government, by calling them rakshas, fiends and other fearful creations which were household words and well known lengds in every Hindu family. Then they proceeded upon another tack. They knew the people to be a very peaceable and law-abiding. They pointed out that this was because the people did not know any better, and that the people of this country believed that their misfortune arose from sins, which they had committed in their former transmigrations, and they pointed out that there were some who knew better who were beginning to cry out, and then they tried to do what they could in regard to these ignorant people by accusing Government of being the cause of all their troubles. One of the witnesses, that day, had expressed an opinion that they were working upon the idea that the country was under a curse for the sins of the Rulers,

They then went on to connect the British Raj with all sorts of calamities, such as famines, fever, cholera &c. Mr. Evans thought that the Jury might probably know what the condition of of the Hindus was at the time of the Mohamedan Raj. The bulk of them were kept in the most absolute subjection, and the idea of the Hindu breathing a word against the ruling power was absolutely preposterous. There would have been no trial, and any Hindu doing anything like this would have had his head off without any trial at all. There had been an enormous outlay upon railways to carry food from one district to another, and in Orissa millions had been spent in the construction of canals. All these things were known, but the scheme apparently was to impute all calamities to the British Government, and to represent that it was the cause of all miseries. It might seem to some people absurd to attribute all these things to the Government, and that blaming them for the Orissa famine was as absurd as blaming the English Government for the failure of the potatoe crop in Ireland. But though this might be absurd from an English point of view, it must be remembered that this was language addressed to uneducated people.—people whose views on many things were most extraordinary and strange to Englishmen. They were ready believers in most monstrous stories. Many of the Jurors may have been in Calcutta when the Hastings Bridge was being built, and when not a servant could be got to cross the Maidan at night because it was believed that the British Government had issued orders for human heads to be placed under the piers of the bridge. But of all things what these people were most likely to believe if it was dinned into their ears was that a determined attack was being made upon their religion. They were found expressing another view. They asserted that there was no bond of common humanity between themselves and their rulers, and that the Government was indifferent and callous to their sufferings. They represented that the Government had done nothing.

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to stop famines except to take some temporary measures, and that the only thing they cared about was injuring their religion by passing the Age of Consent Bill. One of the articles went on to prophesy that the end of the English rule must be the actual starvation of the people. The Jury must remember what harm all this did, and they must remember further that they were addressed to a people who were quite ready to believe that there was a curse upon the country, and who understood so readily the allusion "Oh mother! Is our land of plenty to be made one of death?" but it went on from bad to worse, as in the later articles they went on to shew that in exciting this religious hatred they knew what they were doing. References were made to the people going mad for Dharma. Then, again, in understanding the articles and the fierce hatred which they breathed towards the ruling power and the English race. This was a material fact in regard to it, that, while they were doing this, they were saying, "We cannot rebel, don't treat us like rebels. We know we are saying these things, and yet we are destitute of power to rebel, though the rulers are no better than demons." This was what they were putting to the people. Reference was made to millions dying of starvation and decrease of population, and yet the Jury were probably aware that there had been an increase in the population of India to the extent of 29 millions in the last few years. All these things were put in the reverse way, and it was for the Jury to say what was the meaning of all this.

It was very difficult to see what the motive of the writer was; it might be that if he got up a sufficient amount of religious feeling to be dangerous, the position of the Government would become intolerable, and that it would have to give way and repeal the Consent Act. But whether the writer was really actuated by strong religious fervour did not matter as regarded the verdict of the Jury, of guilt or innocence, although it might be a matter as regarded the amount of punishment which might be awarded them. It might be that a religious fanatic might have a less punishment awarded to him than a man who did the same thing from motives of greed or any other lower motive; but that had nothing to do with the question of guilty or not guilty. One thing was certain, and it was this, that as the case was one of prosecution for seditious libel against the Government, no justification could be pleaded. No Government could listen to this, and it was not possible for any Government to listen to any plea of this kind. It was not possible for the writer to say that he looked upon this as a detestable Government, and that he claimed the right to destroy that Government unless it fell in with his views of religion. That was not an argument which could be heard in any court of justice. This was a matter in regard to which there was only one course. If they were going to live under this Raj, and going to have themselves protected by the Courts of this Raj, they must admit that it was the Government of the time being, and that whoever attempted to excite seditious feelings against it, must be punished.

Before going into an examination of the articles in a short connected form, and giving an analysis of them, Counsel wished to make one or two remarks with regard to the meaning of the words. He would ask the Jury to remember that it was by the context that they could judge of them, and this was what he wished the Jury to do during the whole of these proceedings, and to form the best judgment upon them. One word more, if they took isolated words, there was sometimes a difficulty in making them out; but one could always make out the difference between the language of criticism upon measures, with the intention of having them altered, and pointing out what was wrong with them, and real malignant hostility and vituperation of the essential characteristic of a Government, in doing so, one could no more make a mistake, than one could make a mistake between the familiarity of friendship and the

familiarity of insult. Is was for the Jury, as sensible men, to judge what they really were.

Counsel then proceeded to read and comment at great length on all the articles which had been put in, including one which said that on the day when the 200 millions became secretly rebels even in their minds, on that day the death dirge of the British Raj would be sung, and he concluded by saying that he had laid the matter very fully before the Jury, and had given them all the assistance he could in regard to it. He only asked them to consider this. As he had said before, he desired the Jury, on behalf of the Crown, to consider thoroughly what the real meaning of these things was, and not to fix upon any particular expression, but to make up their minds as thoroughly and justly as they could whether these things did come within the section or whether they did not. It was further to be considered that it was a matter of very great regret to the Government to have had to invoke the aid of a Jury as regarded crimes of this kind, especially as the Government had left the press free here, freer, if possible, than it was in England. No one could say that the press was not free here. Ever since 1835 it has been free as the press in England, except in one year when that freedom had to be suspended during the Mutiny, and between 1878 and 1882, when, having spread seditious matter among ignorant people, it was thought necessary to place some powers in hands of the executive. But after a short time the Act was repealed. That Act was passed at the time of the Russo-Turkish War, when it was not certain that England would not be involved in it, in which case it would have been impossible to have allowed the sort of language which then going on to go on. The vernacular press was relieved from its restrictions, and the Jury saw before them that day what one of these papers had taken to doing. As regarded the remedy, the only remedy was to bring the matter before a Jury to consider whether they, knowing their responsibilities as Judges between the Government on the one hand and the liberty of the Press on the other, considered the accused guilty. Holding the scales evenly, Mr. Evans asked them to say whether they were of opinion that the acts with which the accused had been charged came within the section.

His Lordship said he would direct the Jury as to the meaning of the section.

Mr. Jackson objected, saying that it would be for the Jury to decide with regard to law and fact, and asked his Lordship whether any note had been made of his objection with regard to the written sanction for prosecution.

His Lordship said that it would be his duty to direct the Jury on the construction of the section, and that he had already made a ruling in reference to the point of sanction.

The Court here rose for the day. The case will be resumed next morning, when Mr. Jackson will address the Jury on behalf of the accused.

Fourth Day, Saturday, August 22.

THE SPEECH FOR THE DEFENCE.

On the case being resumed to-day.

Mr. Jackson said it now became his duty to submit that under section 124A there was no case to go to the Jury. He was not now dealing with the wording of the section, but with the fact that in the interpretation of this section the particular writing must be brought home to the prisoners, not the paper in which it was published. It said that "whoever by words either spoken or intended to be used attempts to excite feelings of disaffection." The words "spoken or intended to be read" were coupled together. Words spoken must be spoken by the man himself, and words intended to be read must be words written by the man himself, that was to say, only the writer of the words, in the same way as it would be only the speaker. At the time that this section was finally drafted these authors had before them the section with regard to defamation, from which it would be read that when

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they wanted to include publication they expressly said so. Let section 124A. be read side by side with section 499 of the Penal Code, and the only alteration that was made in Section 124A was the omission of the words "or otherwise." Mr. Jackson submitted that the words were so strong and clear that his Lordship should have no doubt in holding that this indictment was bad, but he asked that if his Lordship was against him, that he would reserve the question for the consideration of the High Court. His Lordship would bear in mind one thing which in a minor degree was sufficient to indicate that the framers of the charges laid before the Jury were conscious of the difficulty they had to meet. The charge said, "That you by words published or caused to be published attempted to excite feelings of disaffection to the Government, and thereby committed an offence under Section 124A." There was no section of the Penal Code which made publication or causing to be published a criminal offence. When a charge was laid of an offence against any particular provision of law, the language of that provision must be followed. This was not a technical objection in that sense. The prosecution had conceded that they could not find out who the writer of these articles was, as the accused had refused to give up his name; so that it was on the clearest possible evidence that the case for the prosecution was that the writer was the absolutely unknown. His Lordship would see the gravity of the offence from the extreme punishment provided by the law; and could it be contended that in addition to the words of the section other words were to be read, and the operation of the section be thus extended? Every single word contained in the defamation section appeared herewith the exception of the words "or otherwise." The defamation section first became a part of the law of the country; so that with that section before them the Legislature refused to allow the word "publication" to form a part of the section, and therefore, Mr. Jackson said, that word had no application to the present case, and that in fact this charge was bad. If this case was being tried in England he would move for arrest of judgment. The offence under Section 124A. really consisted in the writing of the seditious libel.

The Chief Justice.—You say you may excite feeling of disaffection as much as you please, provided you do it with other people's words; that is to say, that the only person liable to prosecution is the composer of the sentences?

THE QUESTION OF PUBLICATION.

Mr. Jackson said that was undoubtedly his contention. In England under Lord Campbell's Act it was not the publication of the paper, but the publication of the libel that was to be proved. In former days a person was criminally responsible for the acts of his agents. That was done away with. This matter had been considered on many occasions, but Mr. Jackson did not care to refer to Lord Campbell's Act. The words of the late Lord Chief Justice of England were as distinct as the English language could make them. and they were strictly applicable to a case of this kind Mr. Jackson here referred to 3 Queen's Bench Division Reports, page 775, and he submitted that those words were perfectly true, and that it was a matter of the very greatest importance. This Section 124A. was drawn and considered with the utmost care, and was put in inadvertently. But suppose they had. That would not alter his contention or meet it. Because if the words simply applied to the person connected with the speaking of the words or the issuing of the libel, his Lordship had to enforce the law as it stood, and to hold that it had no application to anybody else. Could it be said that a man was to be held responsible for another man's words.

The Chief Justice.—You cannot be responsible for another man's words

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but if you choose to take short-hand notes and disseminate those words throughout the country, a very different state of circumstances would arise. The offence is attempting to excite disaffection by words intended to be read. I know no means of appearing words to be read except by writing or printing or lithography.

Mr. Jackson was not speaking of that. The prosecution had to bring home to the person accused the composition of the particular articles with which he was charged. It must be brought home to him individually. And Mr. Jackson knew nothing more monstrous than that the proprietor of a newspaper should be held liable for sedtion and to transportation for life, because the editor employed in his office did a thing of this kind. Nothing could be presumed, and no agency could be allowed. Under Section 25 of the Charter, he asked his Lordship that this question should be reserved. With these observations, as far as that was concerned, he left the matter as regards this point in his Lordship's hands. He had to take this objection at this stage of the case, because according to the Criminal Procedure Code it was after the evidence was summed up by the prosecution that the defence had to consider whether any case had been made out. In addressing his Lordship on this point of law it might seem to some of the Jury that this was rather opposed to the view Mr. Jackson had expressed to his Lordship of the Jury being sole Judges of Law and fact in cases of libel, seditious or otherwise. He was not now arguing the question with regard to the law. He was now simply saying that the link which connected these men with the matter with which these men were charged was not proved, that in fact a link was wanting.

The Chief Justice said he thought it was perfectly clear that there was a case to go to the Jury. The question turned on the meaning of Section 124A. and Mr. Jackson's contention was that only the speaker of the words or the composer of the sentences was liable under this section. His Lordship thought that was not the meaning of the section, and he did not think the contention was borne out by the words of the section. They were, "Whoever by words intended to be read attempts to excite feelings of disaffection towards the Government," &c. Whoever the composer or the writer might be, by whomsoever the writing or the printing was composed, the person who used them for that purpose within the opinion of the Jury was guilty of an offence under Section 124A.

Mr. Jackson here asked his Lordship to reserve the point under Chapter 25 of the Charter.

The Chief Justice observed that the point was so clear that he must decline to reserve it.

The Freedom of the Press.

Mr. Jackson then proceeded to address the Jury, and first called their attention to the cases on which he relied for the purpose of showing that both the facts and the law were for the consideration of the Jury. He then referred to 11 Cox's Reports, page 52, where the Judge in delivering his charge to the Jury, stated that he was not afraid to adopt the course which he was adopting from the recollection that they were the sole judges both of the law and of the facts, and that his duty was to simplify the case and to assist them if he could, and that in this particular case of libel the law of the land was that the Jury should determine the whole question of law and fact whether it was a seditious libel. He entertained no doubt that with regard to libel the English law had failed in its course. This was a seditious libel. The indictment in the case of the Trafalgar Square riots was for seditious libel inciting to felonious acts, and that power was given to the jury for the purpose of protecting the inviolable blessing of a free and independent press. Mr. Jackson asked the Jury to consider the law as it existed in this country, the law as it then existed, and asked them not to be led away with the idea that this prose

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cution would only affect the Vernacular press. They would observe that in every case which was accorded the Counsel for the prosecution had always prefaced his address with the statement that he was an ardent admirer of the liberty of the press. That was the stereotyped form. This was one of the most important cases which a jury could consider, and their verdict would be discussed and canvassed everywhere; not in this country alone, but in free and enlightened England, and he therefore asked them to consider the serious position in which they were placed. He therefore asked them to be patient with him as he was obliged to address them at very considerable length, and to go over again those articles which they heard read and referred to *ad nauseum*. This was a State prosecution, and was conducted not only by the learned Advocate-General and the Standing Counsel, but by the importation into it of a member of the Supreme Legislative Council, and it was conducted in a spirit which he did not regret. In most cases by the tradition and practice of the English Bar the prosecution did not try to influence the Jury in any way, but laid before them a fair statement of the case, and allowed them to consider the whole of the circumstances. But what did they find in this case—warmth of language, a distortion not merely of the facts, but an attempt to pervert the plain words of the law, because Mr. Jackson could assure the Jury that this Section 124A. had from the beginning been limited by an interpretation wholly opposite to that put forward in the case for the prosecution. They had the threats held out to them to influence their judgment, that in the event of their not doing their duty in this case, the law would have to be amended. They had been told that as a matter of fact the freedom of the press was unimperilled, but Mr. Jackson told them that it was imperilled whenever the Government chose to do so, because since 1835 they would find that regularly every twenty years the press was interfered with by legislation. First, it was in 1857, during the Mutiny, when the liberty of the English press was restricted; then in 1878 the Vernacular Press Act was passed, and the last act of folly was the present case, where an attempt was made in the same direction. He first called their attention to the interpretation this Section 124A. had received from persons who were competent to give an opinion. First,, there was Sir James Stephen, who was admitted on all hands to be an undoubted authority in matters appertaining to the criminal law, and Mr. Jackson would show that the section was incapable of bearing any other interpretation than that put upon it by Sir J. Stephen. Originally this section was Section 113 of Lord Macaulay's Penal Code, and it had been intended to have been imported into the Code, but for some reason or other it was omitted. Two of the greatest authorities in a question of this kind had considered this section, Sir J. Stephen and Sir Barnes Peacock. In 1870 it occurred to the Government that a section of this kind should be passed, and on 25th November of that year it was considered at a meeting of the Legislative Council.

Mr. Pugh objected to any reference to the debates in Council: it was not allowable to put them either before the Jury or the Court. In the case of the Bishop of Oxford, Mr. Brown proposed to refer to the speech of the Lord Chancellor, and it was held by the Court that even the Lord Chancellor's speech on the passing of a law was not to be taken as an interpretation of it.

The Chief Justice observed that the cases were not all one way; he would not stop this.

Mr. Jackson remarked that this was another illustration of the way in which this case was being conducted, and the reason why they could not remain still was because they were much more concerned in the interpretation of this section than any ordinary counsel should be, Sir J. Stephen not having been able to find out how this Section 124A. came to be omitted from the Penal Code, wrote to Sir Barnes Peacok, then Chief Justice

of this Court, who said, after looking into his notes, that he thought it was by mistake, but he had no distinct recollection; that after the original Code had been carefully revised, the original and the revised Code were published in juxta position, and Section 113 was substituted for Section 124 with the alteration of transportation for imprisonment for life; that there was a discussion on section 113, and that he thought the words "attempts to excite feelings of disaffection to the Government" were objectionable, and not much less vague and indefinite than "conspiring to bring into hatred and contempt the tribunals of the country;" that he proposed to amend the section to be substituted for section 113, and that he wrote the explanation substituting the words within the last clause for the word "disaffection" in the original explanation. Sir Barnes Peacock's section was carefully considered in committee, and they came to the conclusion that it was not an improvement on the original draft; for one thing it was very much more severe, and Sir J. Stephen would not have Sir Barnes Peacock's improvement on that ground, and he said he could imagine many things which a man had a right to do even at the expense of exciting disaffection, which nevertheless should not be punishable. The mere non-payment of a tax was disobedience to the authority of Government, but to punish persons for disobeying an unpopular law was far from desirable, and, in short, the Committee came to the conclusion that the clause was considerably more severe than that which was drawn by the Law Commissioners.

"DISAPPROBATION" AND "DISAFFECTION."

The clause as it stood insisted on a distinction between disaffectoin and disapprobation. A person might say what he liked about any Government measure or any public man; he might speak or publish what he pleased, so long as it was consistent with a disposition to render obedience to the lawful authority of the Government. Let it be shown that it was not consistent with obedience to the Queen, let it be shown that it was consistent with any intention to resist lawful authority by force, then it did come under the Section; otherwise not. There must be an intention to resist by force, an attempt to excite resistance by force before it could be brought under this section. Sir J. Stephen then proceeded to assert, what was the law in England at the present day, and he introduced this section 124A., not to introduce greater severity, but because if there was no section, the offence would fall under the common law, and would be more severely punishable, add one reason was because he intended to give more freedom. The law of England was the same now as it was in the time of the Tudors, with one or two modifications; the interpretation of it simply depended upon the persons who administered the law. The great peculiarity of the law of treason was, that it considered every thought of the heart criminal, which was to be punished as soon as it was manifested by an over tact. But the section before the Jury did nothing of the kind. It said, "You may create disapprobation as much as you please, so long as it is consistent with a desire to render obedience to the lawful authority of the Government." It was pointed out to Sir J. Stephen by the British Indian Association that this section might have some effect on the freedom of the press, and he was reminded that he had himself been a journalist, but the reply was that if they looked to the English press they would see what they could say, and that was pointed out by Lord Hobhouse as being the principle which should be followed to show that they might write as strongly as they pleased. Mr. Jackson then referred to an article in the *Englishman* of the 1st July, 1870, on the Income Tax, and also to one of the 7th of September, and said he would like to know what there was in the subject of this prosecution which would come up to that, and that was what Sir J. Stephen said people might do with impunity, with the remark that if a man

was not satisfied with what the *Englishman* there said, that man must have an insatiable appetite for strong language, and that the Native press need not be under the smallest apprehension that they would fall under the law. There was one more striking example to which Mr Jackson would refer. It was after the Wahabi row, which was infinitely more grave than the riots of Shambazar or at Benares. It was stated that it was the opinion of Maulvis that a Jehad was not lawful where protection was afforded by the Government, and also that if there was no probability of success there was no Jehad. Mr. Evans told the Jury that these people were not in a position to rebel, and the Futwa of the Moulvis which Mr. Jackson had read was very much like the common European opinion that when the Government was very bad the question whether rebellion was justifiable was mainly a question of prudence. The moment a rebellion succeeded it ceased to be a rebellion or to be wrong. Mr. Jackson submitted that the meaning of the section was that it must be an incitement to resort to force. If the Jury followed step by step the history of this section they would get an insight into what the Government were now trying to do, which would enable them to come to a conclusion as to the petty and contemptible nature of this prosecution.

The next person to come upon the scene was Lord Hobhouse, who succeeded Sir J. Stephen as Legal Member of Council, and some of his observations would be of much assistance with regard to the interpretation to be put on these articles. On the 10th of August, 1876, he said in a Minute that it might be his Engiish prejudice, but he had almost an English repugnance to enter into the matter of the Vernacular Press, except under the pressure of some necessity which would not only justify action, but would show clearly the remedy wanted. They were bound up with the freedom of the press, and the English press was as much concerned with the matter as any Native press in the land. And he said that in his previous note of 18th May, 1875, he stated that many of the English newspapers did more than the Native ones to bring the Government into contempt and odium. He had compared what appeared in the native press with what was said by the *Englishman* and the *Statesman* and the *Friend of India*; he had read in the *Friend of India* articles charging the Government with plundering India, that was to say, imposing taxes for the benefit of England, and it was done with a violence of langunge which certainly was calculated to excite rebellious feelings, if anything of the kind would do so. But as regards the Native press he found a kind of feeble and childish whining against the the Government, in matters, small and great—now because there was a famine in the land, and now because there was a puddle in the street, and indeed the Native press often added some praise which the English press did not. As regard class matters, the English press did not frequently attack the subject, because its class was dominant. From 1870 to 1876 the matter was discussed, and the Jury had seen the generous way with which Mr. Hobhouse dealt with it.

Interpretation of Section 124A.

Mr. Jackson then called attention to the way in which the persons who had imported Section 124A. into the Penal Code put a construction upon it. When the Council met under Lord Lytton's regime—The Chief Justice thought that was going a little too far. Mr. Jackson was now going not into the discussion preceding the Bill, but into those after the passing of the law. The only interpretation he had a right to quote was a judicial construction.

Mr. Jackson said he was going to use it as his own language.

The Chief Justice allowed that Mr. Jackson could do that; he might adopt any arguments he liked as his own.

Mr. Jackson wanted to show that instead of the section having the meaning now attempted to be put upon it, the Government of India, with all the legal

advice at its command, came to the conclusion that Section 124A. could not be worked. He was going to show that the matter had been considered over and over again, and it was held that a prosecution under that section could not be sustained, and that the interpretation now attempted to be put upon it was totally opposed to every construction which had ever been put upon it. He wanted to show that one of the very things his friend insisted upon was that the moment a case of this kind was instituted everything was open to the Jury.

The Chief Justice had no objection to Mr. Jackson using any one else's languages as his own argument.

Mr. Jackson contended that his friend's own argument was that great liberty of speech was allowable in a case of this kind.

The Chief Justice.—That, of course. But was it right to bring before the Jury any arguments on a totally different subject. He did not wish to interfere with Mr. Jackson in his defence. He would trust to him.

Mr. Jackson submitted he was entitled to show what interpretation was put upon this section by persons in the highest position in the State. He wished to use Lord Lytton's own words, and that nobleman could not be accused of any undue sympathy in the Vernacular Press. Sir Alexander Arbuthnot brought in the Vernacular Press Bill in March 1878, and the Jury was threatened by his friend that if they did not discharge their duty according to his view of their duty, there would be a fresh Act. Mr. Evans and the present Advocate-General were both members of the Council at that time, and what was said there was said in their presence, and allowed to pass uncontradicted. At that time the Native press was writing much more strongly than in this *Bangobasi* case. Before a new law was passed it must be shown that there was some necessity for it, and that the existing law did provide for what was required, and Sir A. Arbuthnot said that the existing press law was contained in an Act of 1867, which provided for the registration of printing presses and newspapers, and to the section of the Penal Code, which made seditious words and acts punishable, an explanation was added which rendered the penalties under that section inapplicable to any case in which there was not an obvious intention to counsel resistance to, or subversion of, the lawful authority of the Government. Mr. Evans addressed the Council on that occasion, and with the opportunity given him of correcting that statement of law, nothing was said, so Mr. Jackson thought it might be said that that was a correct interpretation of the law; and Mr. Evans thought on that occasion that the passing of the Vernacular Press Act was necessary under the existing state of things. But the interpretation put upon Section 124A. in the Council Chamber was a totally different one from what he sought to impress upon the Jury here. The language then used stamped this as one of the most silly, weak, and contemptible prosecutions ever instituted. Then Lord Lytton in his address said that within the last few weeks he had refused applications from two different local Governments to institute prosecutions against certain vernacular newspapers for obvious and rank sedition, but he said the law was in its present state a very questionable instrument, as the explanation of disaffection might be taken to explain away all incitements to rebellion which were not actually followed by rebellion. So that the probability of securing a conviction would be doubtful; but though that would make him hesitate to authorise prosecutions, that was not the sole reason why he asked the Council to pass the Bill. Even if he knew that the operation of the law was certain, and the temper of the Jury such as would have rendered conviction secure, still he did not consider a prosecution desirable. What was desirable was to prevent, not to punish, seditious libels; a successful prosecution, even if it might have some deterrent effect, was not so desirable as to prevent the pub-

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lication of such libels; every such victory would be a virtual defeat. Those were the words of a Viceroy who was a thinker and a writer himself, and was infinitely more conversant with the press than the present Viceroy, who had authorised the institution of the present prosecution. And now Mr. Evans told the Jury that the words of the section were perfectly clear. Mr. Jackson said that the interpretation then put upon the section by those competent to do so must be taken as the right interpretation, and the Jury were bound to take into account the opinion of such men as Sir J. Stephen. It was a section passed by his predecessors, and after consideration he said he adhered to the original section, and the Jury had it as clear as possible what was the view of the law up to 1878.

Now what next happened? With a new Viceroy and a new change of Ministry in England, no time was lost in repealing it. Sir W. W. Hunter said in the Council Chamber, on the 19th of January 1882, when Mr. Evans was present, that only in one instance were the repressive powers of the Vernacular Press Act made use of, and that was only a warning, and that showed the extreme reluctance which existed in regard to interfering with the freedom of the Native press, and it was a proof that liberty and security went hand in hand. Mr. Evans then explained how he came to vote for the repeal of the Act after having voted in 1878 for its passing, namely, that it was only paramount considerations of the public safety which induced him to vote for the passing of the Act, there having been wars and rumours of war, alluding to the Russo-Turkish war. Mr. Jackson believed that at the present time there was a Chilean war going on, and that might be taken as a pretext for the re-imposition of the law. When the Jury found a non-official member of Council within four short years changing front in that way with no better reason to give for his change of opinion, it was duty of the Jury to see that the freedom of the press was not put into the hands of the Government of India. Mr. Jackson asserteed that non-official representation here was a perfect farce, and there was a striking instance of it in the rumour which existed here during the agitation on the Ilbert Bill. Was it not the rumour that the two non-official members of the Council at first could find no fault with the Bill, and were silent until they saw the agitation produced among the European and Anglo-Indian community.

Mr. Evans here said he did not care what comments his friend made on the debates in Council, but he objected to the grievous error into which his friend was now falling, and to his making an absolutely false statement. He took the earliest opportunity afforded to him of expressing his views upon the Bill.

Mr. Jackson was glad he had given his learned friend an opportunity for this statement, because it would set him right with regard to many people.

The Chief Justice thought personalities should be avoided.

Mr. Jackson said he was bound to allude to it, because he was showing the change of front which had taken place between 1878 and 1882, and he said that the explanation which was given for that change of front was conptemptible and that the Jury were the only guardians of the liberty of the people, and that it was their duty to see that the liberty of the press was not interfered with when such a state of things was found to exist in the Council. He had now to allude to the President's observations on the occasion of the repeal of the Vernacular Press Act, and anything more scathing and contemptuous he had never seen. The Jury had before them the fact that, instead of the press not being interfered with as Mr. Evans said, it was interfered with every twenty years—one day it was the English press, another time the Vernacular press. The instance he had mentioned about the Income Tax was an instance where the English and the Vernacular press was fighting hand in hand. Every artifice was used to raise race prejudices, and to create the temper

necessary to secure conviction to refer to the words of Lord Lytton.

COMPOSITION OF THE JURY.

Under Section 451 of the Criminal Procedure Code a European was entitled to a jury composed of the majority of his countrymen. Now what had been done on the present occasion, and it was a matter with reference to which he trusted the Natives would take steps to put things right. At present they were entitled to have some proportion of Natives on the Jury, but the way in which these lists were filled—

The Chief Justice said he must interpose here. He noticed Mr. Jackson himself challenge Natives, and the reason why there were so few Natives was that he challenged them as they passed.

Mr. Jackson said that the system worked with the most unfairness; the proportion of European to Natives that were called was as 8 to 1. That was what actually occurred the other day in the Sessions held in the High Court; seventeen names were called without producing a single Native juror, and the defence was entitled only to eight peremptory challenges. He was not saying this for the purpose of showing any want of confidence in European jurors. Of all questions which came before an English Jury, this was the very last which was likely to be affected by any considerations of colour or creed. He was not saying this for the purpose of prejudicing the Jury.

The Chief Justice remarked that Mr. Jackson was not making a charge on the Clerk of the Crown; he was telling the Jury that in this particular case steps had been taken to change the ordinary course.

Mr. Jackson did not say so. He said that this was done in every case.

The Chief Justice observed that what Mr. Jackson said to the Jury was that in this case steps had been taken.

Mr. Jackson again repeated what he said in order that there might be no misconception. He said that the list should be framed. He submitted that were there as many Natives as qualified to serve on the Jury as Europeans, and they ought in common fairness to Europeans be made to take their share of the burden. There should, therefore, be as many Natives summoned as there were Europeans, and that he would maintain everywhere. But as far as the constitution of the Jury for the purposes of this very case he did not suggest anything unusual had been done, but the usual course had been followed, but it was that course which, in his opinion, was most unjust and unfair. Most of the papers put before the Jury had no reference to the Government at all; they were purely and simply articles reflecting on the English character, and were not accusations against the Government. But it was sought by that means to influence the Jury against the accused. These articles had no connection with the case raised by the Government. They might go to the length of criticising in a most bitter spirit everything English, and the object was to prejudice the minds of the Jury and take them away from the question they ought to consider. Warmth of language and everything else was done to inflame their minds. Instead of the matter being calmly and temporately discused, it was the very reverse. The Jury would remember that, as a matter of fact, there were challenges exercised on behalf of the Crown in this case and to a Native too. Nothing which had been said with reference to the Shambazar and Benares riots should be allowed by the Jury to prejudice their minds. What connection had they with this case? To refer to the Shambazar riots as a specimen of the nature of the Hindus was absolutely an insult to common sense. Mr. Jackson would like to see any European put up with what a Hindu met in this case. A Hindu was a possessor of a piece of land; his right to it was admitted by the Courts, he obtained a decree, and when he sought to exercise his rights in respect of that land, a lot of Mohamedans went there and proceeded to break heads but instead of order being enforced, the Hindus were told to give

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up the land peaceably. Mr. Jackson maintained that a reference to anything of that kind was absurd, and that was referred to as one of the instances why writings of this kind which appeared in the *Bangobasi* were deleterious. From the beginning to end and throughout these articles they were not capable of a seditious meaning. One of the tests which Mr. Pugh applied was, that the Government might put up with anything in England, because these things were used there for political purposes, that it did not mean anything, the only object being to turn the other side out. But there had been no allegation that the matter here stood on a different footing. Mr. Jackson submitted that the application of the law was as distinct as could be; that in the words of Sir J. Stephen it must be shown that it was consistently only with a disposition to resist the law by force. Otherwise it did not fall within the section. He had pointed out that that was the well-considered and deliberate opinion of the Government, after consultation with their law officers, and no different opinion had ever been shown from the earliest times of the applicability of the section to a case in which the people were not incited to resistance.

Now as to the nature of this prosecution. The Age of Consent Bill was the prevailing idea—utterly degrading that men should have intercourse with poor little children. Mr. Jackson might be wrong about this, but had he the belief of orthodox Hindus with regard to his religion which they were stated to have, nothing would have induced him to cease agitating till he got the accursed Bill repealed. The Government might say they did not care about their religion and their laws, they were opposed to humanity, and the views of humanity of the governing race must be regarded. They dared not say that marriage should not take place before the age of 12. That would admittedly be an interference with the Hindu religion and customs. Not being able to do that, they passed an Act to prevent intercourse between a man and his wife, but they allowed the marriage to take place. By the 9 Geo. 4, C. 74, S. 85, the age of eight was put as the Age of Consent. Mr. Jackson first wanted to show that if these people were the great brutes they were represented to be, the English had acquiesced in everything they had done up to that time. That was in 1829. It was an English Act applicable to this country. But to show English public opinion which was worth anything about the Hindus of Bengal, he would call attention to what was said by some people who had been Judges here in former times. His friend, Mr. Evans, made it a point that the Hindus themselves were not unanimous. If he would name any section or anything about which there was absolute unanimity, Mr. Jackson would be glad to hear what it was. To tell the Hindus of Bengal that somebody in Bombay or Madras entertained a different view of the Hindu faith might go down with the English public, but no man acquainted with this country would look upon such a statement as anything more than a subterfuge. He did not care whether the Hindus of those places represented more correctly Hindu life. Half the population of Bengal, about 30 millions, consisted of Hindus who entertained a different view. What did it matter if the people of Bombay or Madras thought otherwise? Were not these 30 millions entitled to be consulted, and was a law to be passed with the greatest rapidity, opposed to their views of their own religion and customs? And all this was to be done by a gentleman who was not very long before Advocate-General at Bombay, and who found himself, owing to the accident of being defeated at an election at Home, appointed here as Legal Member of Council. Mr. Jackson would now read the opinion of men whose shoe latchets Mr. Scoble was unfit to tie. He alluded to Lord Kingsdown, Sir Edward Ryan, Sir Lawrence Peel, and Sir James Colville, members of the Judicial Committee of the Privy Council, who, in discussing another subject, pointed out that the age of consent

could not be raised to ten in a country where puberty often began at a much earlier age. What brutes they must have been according to Mr. Scoble, and at whose instance was the Age of Consent Bill introduced? Why, at the instance of a Parsi agitator anxious to attain a little notoriety at home. Mr. Jackson would give the Jury the marriagable age in several countries. So far as that went, the State might say that people should not marry till after a certain age, and that might have a good effect of reducing the population in course of time. Suppose the English prohibited marriage till the age of 21, but at the same time provided that two years or for one year or even half a year after marriage a man should not have intercourse with his wife, Mr. Jackson would like to know what the style of speech would be? The law might say that persons could not marry until a certain age. That would be a manly course to take. But a course such as the Government had adopted here made the French say that the English were the most hypocritical people on the face of the earth. The marriageable ages in different countries were in Belgium 18 for the male and 15 for the female, in Spain 14 and 12, in France 18 and 15, in Germany 14 and 12, in Hungary 14 and 12, in Russia 18 and 16, in Saxony 18 and 10, in Switzerland 14 and 12. Could any one say that they had not experience of these things? Another illustration was this, that though in England the ages were 14 and 12, when a marriage took place under those ages, it was not absolutely void, but was only incohate; the marriage was not complete and could be set aside. There was no question what the effect of the Age of Consent Bill had been, and how very seriously it had been looked upon. He had also shown that there was nothing disgusting or horrible about the thing. It was quite possible that a girl of $12\frac{1}{2}$, with whom intercourse was possible, might be considerably more immature than another girl of $11\frac{1}{2}$. The horrid system of puberty was infinitely preferable, and it was for the Jury to determine whether anything was calculated to do more monstrous injury than interference between a man and his wife as to intercourse. They would recollect the Criminal Law Amendment Act, which was passed in consequence of some articles which appeared in the *Pall Mall Gazette* publishing certain curious articles; and with respect to that Act no case had been decided that it was applicable to the case of man and wife. That Act fixed the age of consent at 16, but Parliament had not attempted to do what had been done here, namely, to make it applicable to married girls.

There were two things which should not be touched, that is the religion of a people and their laws relating to marriage. Keep your hand of those two things, and you would not get into trouble. It was not only with regard to the Hindus, that should there be no interference with their marriage institutions, but as regards all Oriental nations, and even nations in the South of Europe. He was not saying that people in northern countries would not be affected by such interference, but he submitted that it was positively dangerous to interfere in respect of such matters with Eastern nations and nations in the warm climates of Southern Europe. The Jury had been told that the writings of the *Bangobasi* were like a spark that would set the whole of India in ablaze, but the *Bangobasi* had been writing for a long time on the subject of religion without any serious consequences having ensued. What business had they to write on the subject of religion, but surely the consideration of interference with their religious customs should be paramount in the minds of those who interfered with their religion. The obvious answer was, why compel them to write about their religion. As an instance of the effect the question of their religion had on Hindus, Mr. Jackson read what Sir Herbert Edwardes said on this:—"His religion was a question of his daily

life; his vigils, his fasts, his feasts, his domestic affairs, all enter into his religion; it is the backbone of his existence." Then discussing the question of the Mutiny, the same authority said that the rebellion was caused by the Enfield cartridge and nothing else, and he was a person most competent to give an opinion on such a subject.—His Lordship had before him the evidence of the Government Translator, who admitted the great importance the rites of marriage and religion had on all Hindus, and the amout of care which should be taken before any attempt was made to interfere with their marriage ceremony or their religion.

THE ENGLISH LAW OF SEDITIOUS LIBEL.

Mr. Jackson then called attention to the articles which had been published. But before that he briefly alluded to the law of seditious libel in England, and referring to Sullivan's case remarked that the Jury were not told by the otherside that in that case a conviction was obtaiued. With regard to the advice given by the *Bangobasi* not to attempt a revolution because they were not armed, his learned friend remarked that by "don't attempt" they meant "do." But when words of a similar kind were used in the Trafalgar Square riots to an infinitely more dangerous class of men, the London roughs, the verdict was not guilty in respect of all four of the accused. Anybody who had been home during the last four years must have heard infinitely stronger and more seditious language used every day than anything to be found in the *Bangobasi*. And did they find prosecutioos instituted there? Week after a week that went on, and nothing was done; not a single prosecution was instituted. There had been no prosecutions for sedition, except in Ireland, and that was only one during a number of years.

Counsel went on to say that the Jury would find in the representations made against the passing of the Bill that its opponents pointed out on every occasion that it was an undoubted attack upon the Hindu religion, in fact the whole Hindu society of India. It was stated broadly that the Government could not alter or disturb the whole fabric of that society, and as far as this ground went, he did not think it necessary to trouble the Jury at much greater length for the purpose of showing that any attacks made upon the institutions, rights, and customs of the people was always resented. It must be remembered too that that the people had never been converted, and that a man could not become a Hindu and that the Hindus believed, so far as their morality went and its ethics, it was as good as those of Europeans.

He would now proceed shortly to these various articles. He was compelled to go through them again, for which he was very sorry, as the Jury had probably been sick of having them read to them so often. He had to do so bocause a great deal had been made out of them for the purpose of showing how fierce and dangerous their tendency was, but he ventured to say that the Jury would find chapter and verse for almost, if not all, these articles in the English newspapers. Nearly everything that was said in regard to the decrease of population in India would be found written in articles in the English papers. The Jury would also find statistics had been published to show that with all the care bestowed upon the prevention of famines these periodically occurred. There was also what was called a Famine Insurance Fund, but as a matter of fact that fund had been devoted to frontier defences, and famines now occurred oftener than in olden times. It had been urged on the other side that the origin of this agitation was the Age of Consent Bill; but it did not follow that because a paper took up the agitation for the repeal of an obnoxious measure, that it was not entitled to discuss other social questions in connexion with it. His friend took up the

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position, because it was discussing agitation, that everything in the *Bangobasi* must result in sedition. The Jury had seen the language used, and they were told that it must be inflammatory, but how this was, was to him a matter utterly unintelligible. The observation which occurred to him on this, was an observation made by Sir Cecil Beadon to be found in "Kaye's History of the Sepoy Revolt." Mr. Beadon was asked to gag the Native press, and he turned a deaf ear to it. Reference was made to the rebellious spirit pervading these articles which was circulated among ignorant uneducated men, but, Mr. Jackson submitted, they would not understand them. His learned friend also attempted to distort the sense of every one of them. The Jury not only had to take a candid and fair view of these articles, but to go further, and take a liberal and generous view of them. He would call their attention very shortly to these articles, though at greater length than they would like. This was one of the most curious kind of cases he had ever known. Sedition was to be implied from the language itself and nothing else, and no human being had been called before the Jury to speak to the meaning of those articles, though this was in the power of the prosecution to do. With regard to an observation which fell from the Translator examined, the Jury could judge whether it was not a satire, judging from the extreme reluctance with which he gave his evidence, admitting that the Age of Consent Bill as it stood affected the Hindus most materially. Counsel here quoted the witnesses' very words as reported in the *Englishman*, and went on to say that his evidence ought not to be taken as that of an independent and unbiased person. Taken by themselves, what were the articles? It might happen that a certain article was capable of a meaning which the prosecution sought to put upon it. But the *Bangobasi* had not been proved to have written one line so far as there was any evidence reflecting upon the English rules till this Bill was passed. The Jury had it that on the 31st of January, when the first article was published, their whole tone was one expressing not only the utmost loyalty, but the belief that they would succeed in carrying out what they intended to do, namely, preventing this Bill being passed into law. The articles extended over a considerable period of time, and the Government had selected the worst they could possibly find, and a considerable time had elapsed before they did anything. The case was started by the execution of a search warrant by Mr. Lamb, who made over everything he found, books and issues of the paper, to the Government Solicitor. It was also a fact that the Government themselves had been a subscriber for many years. So that it had every opportunity of coming to the conclusion what the paper's line of policy was.

After quoting a few lines from the first article, Mr. Jackson went on to enquire whether there was one single observation in that which was anything like so strong as the observation made in the *Englishman* to which he had referred? He did not intend to say that this was the language which one would usually employ, but when one considered that it was addressed in reference to a matter which concerned them most deeply, he asked whether the Jury thought that the language was too strong? What they said was that the Government might interfere with their religious rites and customs, but practically in doing that they would not occupy the same position in their esteem as they did before. There was nothing whatever in this article, except to say that the Bill had been passed in the teeth of the whole Hindu community, without any attempt to ascertain their thoughts on the subject. Referring to the next passage in the article, Counsel termed it of a harmless character, full of Oriental imagery, which an English writer would have expressed in better terms. Was the reference to the Queen's Proclamation, stating that all creeds

1870, India was likened to a milch cow, and he did not think that any of these articles came up to what was contained in that article. With reference to the Age of Consent Bill, he said that so far as statistics were concerned, there were only two well-authenticated instances, in which girl-wives had suffered during a period of 28 years.

The Chief Justice.—You had better not deal with cases of that kind. I have seen more than two cases since I have been sitting in this court.

Mr. Jackson.—One case led to the introduction of this very Bill, and on referring to extracts from the *National Review*, a paper published in England.

The Chief Justice.—They don't know very much about it. We know what cases come before the Court.

Mr. Jackson.—It does not matter to me whether it is two or twenty or a hundred, but one thing is clear that, having regard to the population of the country, the offences committed are for practical purposes purely imaginary, and only isolated instances have been known to occur. You also have in England an instance of a babe of two years assaulted by her father, and I do not think the whole of London cried out for protection.

The Chief Justice.—No, because they were already protected.

Counsel then went on to say that it might be taken for granted that these instances were extremely rare, and the observations made in this article, "the imaginary grievance of girl-wives," was a perfectly fair and legitimate one.

Referring to the incident of the lady throwing out a "column of pice" from a railway carriage and seriously injuring a Native girl on the head, Counsel characterized this as a piece of absurd exaggeration, and it had no bearing upon the question of sedition.

The writer went on to state: "We have not arrived at such a state of civilization as to say it would not be right to rebel against a foreign ruler having a different religion and having a different nationality. We are not uttering such well refined words; we say that the subjects who are from day to day exhausted and famished, who are harmless, unarmed and untrained in war, are not likely to rebel against the English Government, strong and of high prestige..... The rebellion of Gunga Nunda or of Jitoo Meah was merely the madness of mad men." Was this the language of sedition, or were they attempts to excite disaffection? The writer talks of rebellion as utterly ridiculous. The rebellion of Jitoo Meah, Counsel was informed, took place at Baraset in the year 1820, and on only one gun being fired the whole insurrection collapsed. Further, in the article reference was made to the superior ethics of the movalif of the Hindus. Counsel enquired whether he was not entitled to say that their system of ethics was superior to ours. Allusion had also been made to the five crores of people who lived upon half a meal a day. This assertion, Counsel stated, was absolutely true, and was to be found in some Government papers. It was founded on no less an authority than that of Sir William Hunter. Counsel was not responsible for the accuracy of anything which any official of the Government of India might assert, but he would give chapter and verse. One of the most extraordinary things in connexion with this case was that he was in a position to give chapter and verse for every word of the alleged seditious writings, chapter and verse showing and proving all these statements to be true, at any rate to have a solid substratum of fact.

In reply to a question from the Chief Justice, Counsel said he was unable at the moment to find this passage of Sir William Hunter's. There was reference made further to the establishment, by Englishmen, of a Society for the Prevention of Cruelty to the lower animals, under the rules of which fowls were not allowed to be carried with their heads downward. It did not matter, Counsel said, whether fowls were carried with their heads downwards or upward, but the writer conveyed that Hindus never took the lives of any animals, whereas Englishmen slaughtered them wholesale,

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and from this he argued that their civilization was infinitely superior to our own. Further, reference was made in this article to the fact that in view of the many changes which the Government had made, they were not to be trusted to make any more. The writer pointed out that the Hindu religion had existed for many years, and it had survived the tyranny of several conquerors, and still that religion had remained intact. Surely there was no sedition in all these words. They were facts in the previous history of the country, and the Jury could not shut its eyes to the fact that, as Macaulay pointed out long ago, their civilization was even long anterior to that of Englishmen. Then there was the following passage:—"The Sonatana religion is pure gold; be it Aurungzebe or Kalapahar, Lansdowne or Scoble, whoever may burn it, only the dross will be burnt, the gold will come out only the brighter." The prosecution had made a strong point in reference to these comparisons, but Counsel asked whether there was any indignity in comparing Lord Lansdowne to Aurungzebe, or Sir Andrew Scoble to Kalapahar. He took it that the reputation of one would survive for long generations to come, when the very name of the other would be quite forgotten. If speech like this was to be stopped the sooner, all right to speak was stopped the better.

In answer to a question put by the Chief Justice, Mr. Jackson intimated that he would conclude his address by two o'clock on Monday. The Court then rose for the day.

Fifth Day, Monday, August 24.

STATISTICS OF DEATHS.

Mr. Jackson, resuming his address, continued commenting on the articles which formed the subject of the charge, as well as the supplemental articles put in both by the prosecution and by the defence. But before doing so he referred briefly to the statistics of deaths from famines as given by Mr. Caird, Sir William Hunter, Sir Auckland Colvin and other authorities, and also to the statements made by them and Mr. John Bright as to the scarcity of food for the population, due both to the decreasing area in cultivation and the increasing demands for exportation of food-grains; and arguing therefrom Mr. Jackson maintained that it was fully proved that large masses of the labouring population were unable to obtain sufficient food to satisfy the cravings of hunger, and that but a very small proportion of them were accustomed to have more than one meal a day. Commencing with the article of the 16th of May, he contended that the concluding passage states clearly that from their plain address there was absolutely no hope of rebellion, and that the object of referring to the soldier classes was simply to point out the utter impossibility of thinking that the population of Bengal could rebel, and that there was not a word in the whole article which could be construed into sedition. It would be remembered that the *Bangobasi* was one of the most conservative journals in Bengali, and totally opposed to the idea of progress. Mr. Jackson submitted that the *Bangobasi* had done nothing for which it was fully and amply justified in doing, and he commented on the conduct of Sir Alfred Croft in having prohibited the Sanskrit Professors of the College from taking part in, or having anything to do with the demonstrations regarding the Age of Consent Bill. With reference to the advice given by the *Bangobasi* not to resist the Government, but rather to take their wives and children and leave the country. Mr. Jackson referred to the emigration of the ancestors of the English to Pennsylvania owing to religous persecutions, and similarly the *Bangobasi* said, "Do not let us fight, do not let us turn the people out of our land, but let us ourselves go away."

The term "Mlecchá."

According to the both Hindu and Mohamedan ideas, however, the Sovereign might be, was always, a god in the eyes of his subjects, and, in fact, it was a Hindu proverb, "Although the

ruler is a Mleccha, still he is the Sovereign." The term "Mleccha" was simply a person outside the pale of Hindu society—a barbarian. One of the articles put in by the prosecution contained passages which were a mere paraphrase of Lord Lansdowne's own words at the time of the passing of the Age of Consent Bill, when he said—"I ventured to say that in the eyes of every reasonable man, the pledges given in the Queen's Proclamation must be read with a two-fold reservation: first, that in all cases where demands are preferred in the name of religion which lead to practices inconsistent with the maintenance of the public peace and are condemned by every system of law and morality in the world, it is religion and not morality which must give way; such were the precedents afforded by legislation against infanticide, the immolation of widows, and the immunities enjoyed by Brahmins." The reference to Suttee, Mr. Jackson said, was an unhappy illustration, because Suttee was nowhere enjoined by the Shastras. Was religion to be dealt with according to the morality of somebody else? Then, referring to the article of the 18th of April his friend, who put in that article, said that it was indicative of what the feelings of these people were. In that article the *Bangobasi* was urging that, as far as morals were concerned, the Hindu was superior to the English; that the English married their own cousins, that they allowed their daughters to join in sports and pleasures and made themselves drink wine; whereas among the Hindus a Bose could not marry a Bose, or a Ghose a Ghose, that their females were never allowed independence, that their sons were taught the principles of asceticism. Was there one word of untruth in that? On the contrary, it was well-known that the Hindus had the greatest possible objection to the system of European education. But all that had no reference to Government, and therefore could not by any possibility be construed into sedition. Why, the *Pioneer* in one of its articles said that the *Bangobasi* was the organ of orthodox Conservative Hinduism, and used to be a strong opponent of the Congress, and such a paper was naturally foremost in opposition to the Age of Consent Bill, and it was probably that which led to the violence of anguage which was charged as sedition. Mr. Jackson asked the Jury to read the article published on that very day, the 18th of April, suggesting a postponement of the monster meeting which was to be held regarding the Age of Consent Bill, on the ground of the embarrassment into which the Government had fallen owing to the disturbances at Manipur. That, he said, was utterly destructive of any idea of want of loyalty on the part of the *Bangobasi*. Why, in Ireland, the very time, when the English Government was mostly pressed with difficulties, was the time when meetings of this description were held? Then his friend referred to the words "tumultuous agitation," but the literal meaning of agitation was noisy. And with regard to the statement that the Lord Governors and others here were nothing more than naib-gomasthas, Mr. Jackson hoped that it was not the sting which had goaded the Government to institute this prosecution. As regards the article of the 23rd of May, which was put in to show the seditious nature of the articles, the subject of the indictment he pointed out with reference to "Killing wives and subjects," that it was a quotation from a telegram to the Viceroy himself from the Regent of Manipur, which had appeared in the English papers. Referring to another portion of the articles, he went on to ask how anybody could possibly say that this was seditious, he could not understand, and was a state of things quite beyond his comprehension. Before commencing to read the next article of the 30th of May, entitled "No Necessity for Brute Force," he thought that this, too, like most of the other articles, might have been put in by himself on behalf of the defence. The contemptible term

"Monkey Tolah" had no reference to any one else but the progressive Hindus. The writer, referring to a statement made by Lord Lansdowne, says, "Why on earth do you do this for, or if you did that, you would be doing right." Counsel submitted that if a newspaper were not allowed to criticise the measures of Government, the press had better be stopped altogether. They had a perfect right to complain of what they considered to be wrong policy on the part of the Government, and to prosecute them for doing so, counsel thought, was but adding insult to injury. The rest of the article merely discussed religion, and in doing so, the writer is said to have done wrong, and is, in consequence, liable to prosecution. The writer had also stated what the Hindus were doing at Benares, and the Mussulmans at Shambazar, and he pointed out to the Government that if certain things were done, the people would be quiet.

HINDU LOYALTY.

In passing on to the next article, he felt he was bound to say that loyal subjects like these could not be found in any part of the world. As a matter of fact, it was a part and parcel of the Hindu religion, and their "dharma" held loyalty above everything else. The writer had even said that, apart from the loyalty of sentiment, theirs was a loyalty which proceeded from self-interest. There was no class of subjects to docile as the Hindu, and all that talk about mutiny had astonished him. What part had the Hindu taken in that? The part in which the writer had referred to the coming of Russia, seemed to Mr. Jackson positively prophetic. He could not in the whole of this article discover a single word indicative of revolt. Referring to the next paragraph, Counsel submitted that the sentiments there conveyed were from the Hindu point of view perfectly right, and he even thought that many Englishmen would endorse that view. This temple which was near the place of execution at Manipur was destroyed. This was a most unwise thing to do, and, what was more, quite unnecessary.

He would pass on to the next article, headed "Manipur." This one had nothing to do with sedition, as it simply discussed what had taken place, or was then taking place at the time at Manipur, and of one thing he was absolutely sure, and that was that it was certainly not written in language anything like what had been used by the English press when the Ilbert Bill or the Income Tax was under discussion. The *Pioneer* first started the discussion, and it was wrong in doing so. It should never have said anything, like what it did while the case was under trial.

Mr. Jackson went on to argue that these were severe remarks in reference to an agitation against the Bill, until the Government became intolerable or till the Bill was repeated. The Jury would remember the agitation conducted against the Ilbert Bill, and it was then said that it was dangerous to allow such agitation to continue. He quoted several opinions in favour of the Age of Consent Bill. One was that of Mr. David Lyall, the Commissioner of Chittagong, and another was that of Mr. Allen, the Magistrate of Noakhally, and the third was that of Mr. Savage, the District Officer of Furridpur, who expressed, the opinion that if the Bill was passed, half of the population of the district would come within the operation of the law. There was a party in England whom Mr. Jackson termed Howling Dervishes—a party, who, when they had nothing else to do, took up questions, in reference to which they knew nothing. They recently took up a position of antagonism to the Opium revenue, and he had little doubt that they would succeed in their agitation. This was the sort of legislation which the people of this country would, before long, get. This agitation would be, from time to time, carried on in India, and there was a good deal of truth in it. Who were the mainstay of

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the Government of India, but the orthodox Hindus ? These were not the English educated gentlemen, but the pure conservative Hindus—certainly not the gentlemen whom he saw there in Court. Mr. Jackson asked the Jury to remember that this prosecution was not directed alone against the Vernacular press. There were indications in many measures of Government that their lines of policy were subject to many and sudden changes, and it was not impossible that one day the English press itself would find itself brought within the language of "sedition." This only meant that one party in England might go out and another come in, and that it depended upon the "fads" of some people to force these measures upon the Government.

Counsel referred next to the manner in which the Clerk of the Crown had empanelled the Jury, and animadverted upon the way in which the Jury list had been made up. Mr. Jackson referred to several cases in which the duties of Jurors were defined, and concluded by saying that he had no doubt, they would come to a right conclusion upon this most important and delicate case.

Charge to the Jury.

The Chief Justice in charging the Jury said that before he proceeded to deal with the evidence in this case, he wished to say a word with reference to the remarks which Mr. Jackson both that day and on Saturday had made with regard to the composition of their body. His Lordship was himself struck to see the small number of gentlemen who had been convened to form this Jury, and he had asked the Clerk of the Crown how it came about. Mr. Apcar had written a letter on the subject describing the reasons. The Clerk stated that Special Jurors ought to have special qualifications, and he had to find out the qualifications of each, that he had used his best endeavours to obtain the names of all those who possessed those qualifications. He had applied to Dr. Mohendrolal Sircar, to Raja Durga Charan Laha, to Babu Gonesh Chunder Chunder, the Solicitor, and had also applied to the Secretary of the Indian Association, Babu Rajkumar Sarbadhikary, and to the heads of various other Native Associations to get names sent to him, but these had given him small information, and that was the reason why the number of Native gentlemen out of the Jury was so small. His Lordship undoubtedly agreed with Mr. Jackson that it was a misfortune that the names of more Native gentlemen were not on the Jury for the purposes of the case. He thought it very much to be regretted that people in that position, who had the means of knowing, who were qualified, did not supply the names. These were the remarks he had to make at the beginning.

With reference to the case itself, the four persons before them were accused under section 124A of the Penal Code, of having incited sedition, and inasmuch as the offence was entirely a creature of that section, his Lordship thought it best that he should explain the law and review that section, and consequently he had directed Mr. Apcar to have copies of it made and given to the Jury, and each was in possession of it. The main question was what was the crime of sedition in that section with which the accused were charged, and the next question was what was the offence which the prosecution alleged against the accused. The section was divided into two portions, the first part constituting what the crime of sedition was, and the other giving the exceptions. Counsel, for the defence, contended that the word "disapprobation" was a substitute for "disaffection," and that they were one and the same thing. If that was so, the effect of the explanation would be to so explain away the section that no offence would be committed. But that was not the case, and consequently there must be a distinction between the two words. Now the Jury knew perfectly well, knowing the English language as they did, that there was a distinction between the words

"disaffection" and "disapprobation." Wherever the word "disapprobation" was used in the English language, it meant, it represented the contrary to "approbation." The word disaffection covered disaffection, attempts to create a feeling of disaffection in the mind contrary to the feeling of disaffection, and as his Lordship understood, feelings among a community of dislike or hatred or something of that kind. Now when the Jury came to consider mere "disapprobation" a totally different state of things arose. A man might disapprove in one way or another without any dislike, and he might disapprove of certain actions, such disapprobation being consistent with the greatest possible affection for the man. So that, he told the Jury the meaning of these two portions of the section was distinct, and that a man's "disaffection" was totally different from "disapprobation." Disapprobation referred to the disapproval of a man's actions, and disaffection related to feelings animated against a man or the Government itself. In the words of Sir FitzJames Stephen, it meant the creation of disaffection which created a disposition, which was not consistent with a desire to render obedience to the Government. The intention to actively resist is the offence created. So that, with these words of explanation he did not think the Jury would have any doubt as to what was the meaning of the section in reference to disaffection or inciting disaffection. Having taken the meaning of the section from him, the whole question remained for the Jury to decide whether upon the evidence which had been laid before them, the accused had been guilty of attempting to create these feelings of disaffection in the way in which it had been put to them. The Jury would bear in mind in considering this, the nature of the paper itself, what the nature of the paper showed upon the face of it, and the class of persons to whom it was addressed. If the Jury would look at the article which referred to the cultivation of jute, they would see clearly that it was not directly directed to the cultivated class, and that it was directed to the persons belonging to the same classes, to the same people, to persons of the same class, as those who wrote it, and that it dealt with grievances which were opposed to the rights and actions of other sections of the community. What the Jury would have to consider was the intention of the persons disseminating these articles, and the feelings which they would be likely to evoke towards the British Government, and what intention it was in their minds to create in the minds of their readers. In reference to that the Jury would have to consider the relations of the British Government towards the people of this country, and this was, of course, of material importance for their consideration in reference to the explanation between the meaning of the words "disapprobation" and "disaffection." The Jury would remember that for the purposes of the Government of this country and for other purposes, what was known as the British community, was known as a portion of the British Empire; that the Government was being conducted by persons to whom power was delegated in the same way as other portions of the British Empire were governed, and that, consequently, a very different state of things arose; that they were dealing with a subject people, and that the position of this country was different from other portions of the British Empire. But the real question, the Jury would have to consider in considering these articles, was whether the intention of the persons who disseminated them among the people, was to raise feelings of enmity towards the Government of this country, or whether they were, as Mr. Jackson told them, the mere expressions of an intention to excite feelings of disapprobation of the measures of Government. This was the real question the Jury would have to consider. They would have to bear in mind that the question which they would have to consider, was the intention of the parties in reference to the

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crime which was created under this section. Crime consisted of intent, the fact of doing a thing, which, as Sir Fitz-James Stephen says, a man might do quite rightly, and the effect of which would create disaffection, but which would be a crime, if the intention was to create disaffection. The evidence of the intention, with which a man did a thing, was the thing itself. Now, the object of the writers and the publishers of the articles might be one thing, but their object with intent to attain it might be a totally different thing, and consequently, although the object which they wish to attain might be the repeal of the Consent Bill, or to obtain an increased circulation of their paper, if with the intent of attaining that object, they created feelings of disaffection in this country, and the Jury thought it had been done with that intent, then it would be their duty to find them guilty.

THE INTENTION OF THE ARTICLES.

The evidence in the case and the connection of the accused persons were to be found in the articles which they had disseminated. The charge against them was that they had disseminated and published five articles and various others which had been put in evidence before them (both the prosecution and defence). They were not charged in respect of the latter of these articles, but they had properly been put before the Jury, because they purported to show the intent with which the further five articles had been published, with reference to which, the charge was based. The matter had been so fully placed before them and the articles had been discussed so fully, that his Lordship did not think it necessary to read them again, and consequently, all that he wished to do, was to show whether the apparent object of them was to create feelings of disaffection against the persons constituting the Government of this country as a Government, or, whether the intention of these articles was merely to express disapprobation of particular administrative measures. The Jury were aware that the first article was dated the 31st January, 1891, and it was put in by the defence with the view of showing, that the object of the proprietor and manager of the paper was to discuss the Age of Consent Bill and to express their feelings—that afterwards they expressed a wish to discuss the Bill to public meeting, apparently thinking, that by such discussion their object might be gained. The Bill was passed upon the 19th of March, and the Jury had no evidence before them and no means of knowing the mode in which this paper treated this question between the 31st January and 19th March. In subsequent issues on the 28th March two articles appeared on the subject of the Age of Consent Bill. Both these articles lament the condition of slavery into which people had fallen, and they called attention to this Age of Consent Bill. There was one remark which his Lordship thought he ought to make, with reference to what had been said by the defence in relation to the Bill itself. He was not going to ask the Jury to consider the merits of the Bill itself, nor to express any opinion as to whether it was in accordance with Hindu law or not, but having regard to the course which had been taken in the matter, both by the Legislature and other public bodies, he thought the Jury would agree with him that at all events there was a great deal to be said upon both sides, and that such a Bill would not have been passed by the Legislature if they had not before them material which led them to the conclusion that some restrictive protection was required, not for Hindu men, but protection for Hindu female children against Hindu men. It was quite true that Hindu men did not ask for any measures of protection, but the question was whether protection was required against them. Whether that was so or not, was not material, but the fact remained that upon the material before it, the Government came to the conclusion that it was right to take action. They also came to the conclusion that they were entitled to take

action, though it interfered with the religion of the people. At all events the Jury must not assume that this was a wanton, uncalled for exercise of arbitrary power, and that the Government willingly created such a violent grievance as some thought. So much for that part of the case.

On the 28th March these two articles appeared. They condemned the condition into which the country had fallen, and asserted that their condition now was one of absolute helplessness, that they, their religion, rites, custom, and everything were at the feet of the conquerors. These articles were independent of the rest, and it would be for the Jury, as Mr. Jackson had told them, not to look at any isolated expression in them, but to look at them as a whole to give them the fullest and the most serious criticism and consideration, and moreover, more than that to give the prisoners the benefit of any doubt, if they had any as to whether they had any intention of creating those feelings of disaffection, to which he had alluded. After these two articles, came one of the 18th April which was put in by the prosecution as showing whether the intent was proper or not, and from that time, down to the month of June, these articles went on. They went on, and the line taken was that they described the grievance of the people. They described the effect that the country suffered from periodical famines. They described the effect of diseases of different kinds which were prevalent in the country, that there was distress in the country, that there were riots, that there were railway accidents, and they described further what was an undoubted fact, that people of this country were in a state of extreme poverty. So far as these were concerned, Mr. Jackson had urged that all these statements were supported. Whether truly or not, there was nothing false in this that the state of things did exist, and the people were in an extreme state of poverty, Counsel for the defence had urged that the accused had disseminated all these as facts, and that no one had any right to complain of that. Then came the question whether it was the fact in this case that the publication of partial statements of facts or true facts had been misrepresented for a particular purpose. This question was the one which the Jury would have to consider—whether the publishers of this paper in making these statements disseminated this through the country intending to give the people of the country the true statement of the state of things which was caused by the presence of the English in this country, or whether it was, as Mr. Jackson put it, merely a statement of their disapprobation of the measures of the existing administration, and that this administration did nothing for the amelioration of the condition of the people, but only brought in measures which were not wanted, and which harassed the people, and which, if they did not interfere with their religion, at all events, interfered with their usages and customs.

The next two articles, which the Jury had to consider, were those of the 6th of June and the 1st of August. One was headed "What Will Be the End?" and the other "Universal Destruction Is Certain." In these two articles the writer, whoever he might be, had summed up his meaning, and it would be for the Jury to draw their own interferences and come to their own conclusions whether the writer's meaning was merely criticism of the measures of the existing administration, or whether he intended to incite in the people of this country a disposition toward disaffection; such disaffection, as was opposed to the responsibility of the Government of the country and a resistance to lawful authority. With reference to what, was said in that article, a portion was retranslated by the Court Translator, and in reply to an objection raised by Mr. Jackson, if the translation given, was correct in the main, rebellion against an alien ruler would be crime if there was a prospect of its being unsuccessful.

His Lordship had no means of knowing, but there was one gentleman among

the Jury, who, he dared say, would take that portion of the article and translate it to the rest. That article was headed "Hurribole," and was an indication of the writer's view in regard to rebellion. Whether the writer did that or not, whether he had an intention to excite these feelings in the breast of these people, it is not for him to form an opinion, or to express an opinion, or even to indicate an opinion on this question. It was absolutely one for the Jury to deal with, but he would not be doing his duty, unless he called attention to the mode in which the proceedings at Manipur were described. The writer referred to Mr. Quinton, and it seemed to his Lordship that the Jury should consider whether the meaning of those words was merely to express condemnation or disapprobation of what was. It was not right for his Lordship to say more on this subject, and he would simply call attention to it.

These were the points before the Jury, and upon which they would have to come to a conclusion as to the intent with which the articles were circulated and published by the accused. His Lordship, in conclusion, asked the Jury very earnestly to dismiss from the minds all questions of prejudice. The only matter before them was the intent with which these articles were written as shown by the acts of the persons who wrote and diffused them. As to the policy of the Government in instituting this prosecution, as to the policy of the Government which passed the Age of Consent Act, and as to the policy of the Government in passing an Act which had been termed the "Gagging Act," the Jury had less than nothing to do; and if they allowed one single consideration of that kind to affect their minds, he told them they would not be doing their duty. Their duty was to form an opinion upon the evidence which had been laid before them, both on behalf of the prosecution and the defence, and he was quite sure, the Jury would come to a conclusion upon the evidence alone. They were to be the Judges of these five articles, and the only issue which they could form any opinion upon, was based upon these articles. They were articles which had been placed before them by both sides, on the one side showing that they had a criminal intent, and on the other as showing that the intention was merely to discuss the measures of Government and to show their disapprobation of those measures. The whole of these matters were before the Jury, and his Lordship thought that he had explained to them, as clearly as he could, the law which was to guide them, giving them plainly his view of the law, and with these words he asked them to consider their verdict.

The Jury retired at 4 P.M., and after an hour's deliberation returned to Court.

Clerk of the Crown.—Are you all agreed upon your verdict, gentlemen.

The Foreman.—We are agreed. We are 7 to 2.

The Chief Justice.—Is there any chance of your being unanimous.

The Foreman.—None whatever, my Lord.

The Chief Justice.—The Jury are discharged. This is not the case on which I should accept anything but an unanimous verdict.

On this, result being known, the crowd of Natives in court, numbering about a thousand, commenced clapping and cheering. The Chief Justice, on hearing the uproar, ordered the Court to be cleared immediately. After this had been done and quiet restored, the Chief Justice asked Mr. Pugh what course he intended to pursue as the Jury had been discharged. Mr. Pugh, in reply, asked for time to consider the matter, and the course he would adopt after consultation with the Advocate-General.

The Chief Justice ordered the case to remain as the *remanet* at the next Sessions Court Board, and ordered the prisoners to be enlarged upon the same bail.

The Clerk of the Crown pointed out that the prisoners had surrendered to their present bail.

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The Chief Justice directed that the prisoners be enlarged upon fresh bonds and the same securities.

The Foreman of the Jury asked his Lordship to make a direction that they should not be summoned upon another Jury for at least another year. His Lordship thought he had no power to do so, but upon being informed that this had been done before, he directed the Clerk of the Crown to attend to this request.

APOLOGY ACCEPTED BY THE GOVERNMENT OF INDIA.

Darjiling, the 9th September 1891.

From—Sir John Edgar, K.C.I.E., C.S.I., Chief Secretary to the Government of Bengal. To—The Secretary to the Government of India, Home Department.

In continuation of my letter No. 3375J., dated the 28th of August last, I am directed to forward a copy of a petition to the Lieutenant-Governor of Bengal from Jogendra Chunder Bose, Kristo Chunder Banerjea, Brojoraj Banerjea and Auronody Roy, respectively proprietor, editor, manager and printer of the Bengali newspaper *Bangobasi*, in which they express their deep and heartfelt sorrow for having allowed the articles which were the subject of the recent prosecution, to appear in the columns of the *Bangobasi*, and throw themselves unreservedly on the mercy of the Lieutenant-Governor. In a separate communication, they undertake to publish this petition in the *Bangobasi* newspaper when required by the Government. I am also to forward a copy of a letter from the President of a newly-formed Native Press Association, in which the members, who are the proprietors and editors of nearly all important Native newspapers published in Bengal, express their regret at the use of the language of the articles, but support the prayer of the petitioners which is also supported by the British Indian Association in a letter, copy of which is also submitted in which they express their strong condemnation of the language and tone of the incriminated articles.

2. In considering the above petition and letters, the Lieutenant-Governor has thought that great weight should be attached to the results of the recent trial. In the first place, the interpretation placed by the Chief Justice, in his charge upon section 124A of the Indian Penal Code, is substantially that contended for on behalf of the Crown. In the second place, there can be no reasonable doubt that a majority of the jury, in the proportion of 7 to 2, were in favour of conviction, and that it was solely owing to what might be described as an accident, that this verdict was not accepted by the Court under section 305 of the Criminal Procedure Code and the accused convicted. In future every editor, who admits a seditious article inciting his readers to feelings of disaffection against the Government, will know that he is committing a breach of the law as laid down by the highest authority in Bengal, and will hardly hope to escape punishment through the chance that the jury may disagree, and that the Judge may again decline to be governed by the verdict of the majority. The main object of the Government in instituting the prosecution, *viz.*, to ascertain and make known the exact state of the law has been thus attained, and the accused persons have now expressed their contrition unreservedly, and have pledged themselves never again to give any just cause for the belief that they are intent on exciting disaffection.

3. In these circumstances the Lieutenant-Governor considers that no adequate object would be gained by renewing the prosecution next November, but rather that Government should gladly take the opportunity of showing that it is not influenced by vindictive feelings, and he, therefore, proposes to instruct the law officers of Government not to proceed further in the matter. Before, however, taking this step he thinks it advisable to ascertain the views of the Government of India on the subject, and has therefore directed me to submit the petition and memorials for the consideration of His Excellency the Governor-General in Council, and to solicit early

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orders as it is desirable that the matter should be disposed of with as little delay as possible.

Simla, the 17th September 1891. From—C. J. Lyall, Esq., C.I.E., Secretary to the Government of India, Home Department. To—The Chief Secretary to the Government of Bengal.

I am directed to acknowledge the receipt of your letter No. 148J.D., dated the 9th instant, with which you forward, a copy of a petition to the Lieutenant-Governor from the proprietor, editor, manager and printer of the Bengali newspaper *Bangobasi*, in which they express contrition for having allowed the articles which formed the subject of the recent prosecution, to appear in that paper, promise henceforth to conduct it in a spirit of loyalty to Her Majesty the Queen-Empress and the Government of India, and throw themselves unreservedly on the mercy of the Lieutenant-Governor. You also enclose a representation from the Pres[illegible] of the Native Press Association, which is described as having been recently formed after the institution of the proceedings against the *Bangobasi*, with the object (among others) of improving the tone of the Native Press and preserving moderation in the discussion of all public questions, interceding on behalf of the *Bangobasi*, the directors of which have now joined the Association; and another from the British Indian Association, supporting the prayer of the petition, and entreating the Lieutenant-Governor to direct, in consideration of the humble submission of those responsible for the paper, that further criminal proceedings shall be stayed. Sir Charles Elliott proposes to instruct the law officers of Government not to proceed further in the matter, but before doing so, desires to ascertain the views of the Government of India.

2. In reply, I am to say that the Governor-General in Council has perused these papers with satisfaction, and fully approves of the course which the Lieutenant-Governor proposes to take in directing the prosecution of the accused in the *Bangobasi* case to be withdrawn. The proceedings which were instituted under His Honor's orders (with the approval of the Government of India), had it for their object to bring home to the conductors of the Native Press of Bengal that the disloyal and seditious utterances in which so many of their number permit themselves to indulge, cannot be tolerated. The paper, which was selected for prosecution by the Lieutenant-Governor acting upon the opinion of his legal advisers by whom articles, upon which the prosecution was based, were chosen, was one of those which, since the passing into law of the Age of Consent Act in March last, had shown themselves conspicuously virulent in their attacks upon the Government. No prosecution under section 124A of the Indian Penal Code had, however, been instituted since that section was added to the Code in 1870, and doubts had been expressed in various quarters as to the manner in which it might be construed by the Courts. The Government of India did not share these doubts, and were not prepared to admit that the law, as it stands, is insufficient.

The law has now been clearly explained by the highest judicial authority in Bengal, and the interpretation put upon it coincides with that which the Government of India themselves attached to it. It has been shown beyond doubt that deliberate attempts to excite feelings of enmity and ill-will against the Government, and to hold it up to the hatred and contempt of the people, and misrepresentation of the true state of affairs by partial statements of facts so as to cause disaffection, are offences within the purview of the section, and that writings of this nature in the public press render those who publish them, liable to puni[illegible] under the existing law.

This having been fully [illegible] and the persons, resp[illegible] appearance of the in[illegible] in the *Bangobasi*, [illegible] acknowledged th[illegible]

temperate, disrespectful, and unjustifiable," having expressed their contrition, and having promised never to repeat their offence, the Government of India are not desirous of pressing the matter further against these defendants.

I am to say in conclusion that neither now nor in the future has honest and independent criticism, however, mistaken or even hostile of Government measures or the action of public officers, anything to fear from the law, so long as it is put forward in good faith, does not attempt to stir up hatred of the Government, or attack its inherent characteristics. So far as it is well informed, such criticism is welcomed by the Government of India as a valuable auxiliary in the good administration of the country.

THE APOLOGY.

Calcutta, the 4th September 1891.

To—The Hon. Sir Charles A. Elliott, K.C.S.I., Lieutenant-Governor of Bengal.

The humble petition of Jogendra Chandra Bose, Krishna Chandra Banerjee, Brojoraj Banerjee, and Arunodoy Roy. Respectfully showeth,—That your petitioners, Jogendra Chandra Bose, Krishna Chandra Banerjee, Brojoraj Banerjee, and Arunodoy Roy were respectively as proprietor, editor, manager, printer and publisher of the Bengali newspaper *Bangobasi*, printed and published at Calcutta in the Bengali language and circulated among, and read mostly by Bengalis throughout Hindustan, prosecuted at the instance of the Government in the High Court of Judicature at Fort William, in Bengal, in its Original Criminal Jurisdiction under Section 124A of the Indian Penal Code, for having printed and published certain articles in the issues of the said *Bangobasi* newspaper, dated [illegible] March 1891, 16th May 1891, [illegible] 1891.

[illegible] petitioners were tried by [illegible] composed of seven Europeans [illegible] Armenian gentlemen [illegible] gali gentleman, but [illegible] agreement in the verdict the said Jury was discharged by the Hon. the Chief Justice of Bengal, who presided in the said trial, and upon an inquiry made by the said Chief Justice of the Standing Counsel to the Government as to what course would be adopted by the Government against your petitioners, his Lordship was informed that the matter should be placed before the Advocate-General, and such action, taken as the Advocate-General, might advise the Government. Thereupon the case against your petitioners, was postponed as a *remanet* case to the next Sessions of the said High Court which will be held in November next, and your petitioners were enlarged on the same bail as before.

That your petitioners do by this their humble petition solemnly and sincerely declare that in publishing the said articles in the *Bangobasi* newspaper, there was not, on the part of any one of your petitioners, the remotest intention of exciting or attempting to excite feelings of disaffection towards the Government, nor did they for one moment suppose that the articles complained of could or would excite such feelings in the minds of any of their readers.

That your petitioners fully appreciate the benefits of British rule in India and they should not be true to themselves and to the Hindu race to which they belong, if by any act of theirs they, either directly or indirectly, excited or attempted to excite feelings of disaffection towards a Government to which their country owes so much.

That your petitioners do hereby honestly declare that they are ready and willing to state publicly that there was not on their or any of their part, any intention to excite any feelings of disaffection among the readers of the said *Bangobasi* newspaper towards the Government, and to express their sincere regret that the language and tone of the articles complained of was such as to lay them open to the construction placed by the legal advisers of Government.

That after carefully considering all the matters and things which, on the

one side or the other, have been treated of in the discussions which have taken place in connection with their prosecution, they feel bound to acknowledge that the articles, to which exception has been taken, were intemperate, disrespectful, and unjustifiable. Your petitioners therefore express their deep and heartfelt sorrow for having, however, unintentionally allowed those articles to appear in the columns of *Bangobasi*.

That it has always been the chief aim and object of the conductors of the said *Bangobasi* newspaper to support and render obedience to the lawful authority of the British Government.

That your petitioners do hereby undertake and promise and they are quite ready and willing to publicly undertake and promise, that the *Bangobasi* newspaper, so long as any one of your petitioners may have any authority over the conduct thereof, shall continue to be conducted in a spirit of loyalty towards Her Imperial Majesty the Empress of India and the Government of India conducted on her behalf, and never again give any just cause for the belief that your petitioners are capable of exciting disaffection against the rule of Her Imperial Majesty the Empress of India, or of showing disrespect to the said Government of India.

That your petitioners believe that it has been brought to your Honor's notice that steps are being taken to organise a Press Association, the object of which is to keep the Native Press of Bengal under the control and supervision of the leading members of that Press, and the editor of the *Bangobasi* newspaper has joined the said Association as one of its members, and this, your petitioners venture to submit, is a sufficient guarantee that in future the said *Bangobasi* newspaper will be conducted in a loyal spirit.

That your petitioners have already been impoverished by their aforesaid trial, and further criminal proceedings will be utterly ruinous to them.

That your petitioners now unreservedly throw themselves on the mercy of your Honor and sincerely hope and trust that after all their sufferings the generous protection of your Honor's Government will not be denied to them.

Your petitioners therefore humbly pray that your Honor may be pleased to take the circumstances of their case into your kind consideration and pass such order thereon as to your Honor may seem just and proper.

And your petitioners, as in duty bound, shall ever pray.

Jogendra Chandra Bose, Krishna Chandra Banerjee, Brojoraj Banerjee, and Arunodoy Roy.

SUPPORTED BY THE BRITISH INDIAN ASSOCIATION.

Calcutta the 4th September 1891.

From Babu Rajkumar Sarvadhikari, Secretary, British Indian Association, To the Chief Secretary to the Government of Bengal.

The proprietor, editor, manager, and publisher of the *Bangobasi* newspaper have submitted to the Committee of the British Indian Association a copy of a humble petition which they have presented to His Honor the Lieutenant-Governor in the matter of the articles published in that paper which form the subject of the criminal prosecution now pending in the High Court. The Committee of the British Indian Association beg most respectfully to support the prayer of that petition.

After the termination of the recent trial in the High Court, the proprietor, editor, and publisher of the *Bangobasi* newspaper had several interviews with some of the leading members of this Association. I need hardly say that the members of this Association strongly condemned the language and tone of the incriminated articles, but at the time they were unwilling to that the editor and pro paper in question, who members of society, borne an unblemishe character, could n

to commit so grave an offence as to excite disaffection to the Government.

Both the editor and the proprietor of the paper at once disavowed any such intention and expressed their deep regret that any articles should have appeared in their paper which could reasonably bear such an interpretation, and they declared their willingness publicly to express their regret either in their own paper or in any other way that might be thought proper, and further, publicly to disclaim all intention of writing anything which might excite disaffection to the Government, and they further said that they would faithfully promise to observe the strictest moderation and fairness in the discussion of all public question in future.

In the petition which the proprietor, editor, and publisher of the *Bangobasi* have now presented to His Honor the Lieutenant-Governor, these assurances are again given, and the Committee of the British Indian Association venture to hope that His Honor will take the petition into his favourable consideration. They venture also to think that the object, which the Government had in view in instituting the present prosecution, has been attained by the recent trial, and the humble submission which has now been made by the proprietor, editor, and manager of the *Bangobasi* in their present petition. And the British Indian Association therefore venture to hope that His Honor may think fit to direct that further criminal proceedings shall be stayed. The Committee of the British Indian Association firmly believe that such clemency on the part of Government will be attended with the most beneficial results, as it will conclusively show that the only object, that the Government had in view in directing the prosecution, was an object [illegible] every good citizen has equally at [illegible] namely, to prevent the freedom [illegible] from degenerating into [illegible] license.

[illegible] ASSOCIATION.

[illegible] of the Native Press Association, To the Chief Secretary to the Government of Bengal.

Sir,—The editor and the proprietor of the *Bangobasi* newspaper have sent to the Committee of this Association a copy of a petition which they have presented to His Honor the Lieutenant-Governor in respect to the criminal prosecution now pending against them in the High Court of Calcutta, and they have asked the members of this Association to support the prayer of their petition.

The Native Press Association is of recent formation. It came into existence after the institution of the present criminal proceedings against the editor and the proprietor of the *Bangobasi* newspaper, and the object of the Association to quote the words of the Resolution, under which it was formed, was "to protect, maintain, and further by all legitimate means the lawful interests of the Native Press, and to improve its tone and status, and to preserve moderation in the discussion of all public questions, and to take all such measures as might be necessary to enable the Native Press to fulfil the important functions, which belong to it, as the educator of the people, the exponent of public opinion, and the faithful interpreter between the rulers and the ruled.

The members of the Press Association at present consist of the editors and the proprietors of the following papers:—The Hindoo Patriot; Amrita Bazar Patrika; Bengalee; Indian Christian Herald; Unity and Minister; Hope; National Guardian; National paper; Indian Public Opinion; Indian Messenger; Bangobasi; Dainik; Sanjibani; Samaya; Somprakash; Sambad Pravakar; Hitabadi; Sahachar; Vedavyas; Bharat Mitra; Uchit Bakta; and Hindi Bangabasi.

His Honor the Lieutenant-Governor will perceive from the above list that this Association represents nearly all the most important Native newspapers published in Bengal; and the Association is, therefore, deeply interested in

any prosecution which affects any member of this body. The Association does not desire to discuss the merits of the present prosecution. In instituting the prosecution the Government was influenced, no doubt, by considerations of what it thought, was due to public interests. That being so, the Association has little hesitation, considering all circumstances, in saying that the objects of the prosecution have now been attained.

The editor and the proprietor of the *Bangobasi* newspaper, in their petition to His Honor the Lieutenant-Governor, have frankly admitted that the language used in the articles, which formed the subject of the criminal prosecution, was "intemperate, disrespectful, and unjustifiable," and laid them open, however, unintentionally, to the charge of attempting to excite disaffection to the Government. They have now unreservedly disclaimed any such intention, and have expressed their deep sorrow and regret that they should have been betrayed into the use of such intemperate language.

The members of the Press Association equally regret the use of such language, and a disclaimer having now been made of any intention to excite disaffection, the Press Association have ventured to approach his Honor with the respectful recommendation that he will be pleased to accept the humble submission, now made by the editor and the proprietor of the *Bangobasi* newspaper, and direct that further proceedings in the present prosecution should be stayed.

The Press Association firmly believe that this act of lenity will be deeply appreciated by the community generally, and is sure to exert a wholesome influence on the tone of the Press.

I have the honor to be, Sir,
Your most obedient servant,

RAJKUMAR SARVADHIKARI,
President.
Native Press Association.

Calcutta, September 8, 1891.

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IN 1657 A.D.

FAMILY HISTORY OF BURDWAN *RAJ*.

Abu Rai, by caste a Kapur Kshattriya, was the founder of the Burdwan family. He migrated to Bengal from the Punjab, and settled in Burdwan. In the year 1657 A.D., he was appointed Chowdhury and Kotwal of Pekabe Bagam, &c., in the town of Burdwan, under the Faujdar of Chakla, Burdwan. His son,

2.—Babu Rai, who owned *pargana* Burdwan and three other estates, was succeeded in his turn, by his son,

3.—Ghanasyam Rai, his son,

4.—Krishna Ram Rai, succeeded to the zemindary, acquired new estates, and was honored with a *Farman* from the Emperor Auranzeb. It was in the reign of this Emperor, in 1696 A.D., that Subha Sinh, *talukdar* of Chitwa and Barda, then a part of Burdwan, raised the standard of rebellion against the Empire. Ruhim Khan, an Afghan Chief, co-operated with him in the expedition. In a stand-up fight they slew the Maharaja of Burdwan, and captured all the members of his family except his son Jagat Ram Rai, who escaped to Dacca, to seek assistance from the Governor in expelling the rebels. Subha Sinh, the leader of the insurrection, was stabbed and slain by a daughter of the Maharaja of Burdwan, one of his captives, whose person he had attempted to outrage.

5.—Jagat Ram Rai succeeded his father, Krishna Ram Rai. He also made additions to the family estates, and was honored with *Farman* by the Emperor Auranzeb. He was slain by a traitor in 1702 A.D. He left two sons, Kirti Chandra Rai and Mittra Sen Rai. The elder brother, Kirti Chandra Rai, inherited the ancestral zemindary and added to it parganas Chitwa, Barda, Bhursut, and Manohur Shahi.

Kirti Chandra :—He was of a bold and adventurous spirit. He fought with the Rajas of Chunderkona and Barda near Ghatal, dispossessed them of their petty kingdoms, and also seized and took possession of the estates of the Raja of Balghari, situated near the celebrated shrine of Tarkessur in Hooghly District. These estates were consolidated into the Burdwan *Raj*. Kirti Chandra then proceeded to Murshidabad and got his name registered as proprietor of the new properties. But the boldest achievement of Kirti Chandra was his attacking and defeating Bagdyraja, the powerful Raja of Bishnupore the Chief of the aboriginal Bagdis of Bengal. Kirti Chandra died in the year 1740 and was succeeded by his son Chittra Sen.

7.—Chittra Sen Rai :—He added the parganas Mandalghat, Arsha, and Chunderkona to the paternal estate, and was invested with the title of Raja by the Emperor of Delhi. He died in the year 1744 without issue and was succeeded by his cousin, Tilak Chandra Rai.

8.—Tilak Chandra Rai :—In 1753 Tilak Chandra Rai was honored by the Emperor Ahmad Shah with a *Farman* recognising and confirming his right to the *Raj*, and a few years afterwards was invested with the title of Maharaja-Dhiraj Bahadur and *Panch hazaree*, or commander of five thousands. He died in 1771, and was succeeded by his son Tej Chandra.

9.—Tej Chandra :—In 1776 the administration of the District and of the Burdwan estates was taken out of the hands of Tej Chandra, and was placed in those of his mother, the Mohurani Fool Coomari, the widow of Maharaja Tilak Chandra. She retained control over the estate and district till 1779, after which Maharaja Tej Chandra resumed the management. Maharaja Tej Chandra had a son, Pratap Chandra.

10.—Pratap Chandra :—Died during the life-time of his father. Fifteen years afterwards a pretender appeared calling himself Pratap Chandra and claimed the *Raj*, but after a searching investigation by the Criminal Courts, he was sentenced to imprisonment for false personification and other charges. Several persons of highest respectability, who had been subpœnaed to identify him, swore to his being an impostor.

FALSE RAJA PRATAP CHANDRA,

CLAIMANT OF BURDWAN RAJ ESTATE IN 1835.

——o:o——

Raja Pratap Chander of Burdwan died in the year 1820-21 during the life time of his father Maharaja Tej Chander Bahadoor. The latter having no other son adopted one and gave him the name of Mahatap Chand. Maharaja Tej Chander died in 1832. In 1835, fifteen years after the death of Raja Pratap Chandra, a sunnyasi came to a garden named Raja's Golab Bagh in the Town of Burdwan, and told the Malee (gardener) that he was Raja Pratap Chandra himself, that he did not die as has been given on, but that he had simply gone to Ujnyatobash (living unknown) for 14 years, and has now returned. The Malee gave it out to the neighbouring shopkeepers that the Raja has come and a large number of people went there next morning to see him and when he passed through the Town, people said that this is our Chota Raja. Paran Babu, the natural father of the adopted Maha Raja Mahtap Chand and his Dewan, on being informed of the same, sent a party [illegible]nials and forcibly drove him across the Damudar River. Shortly after, the sunnyasi went to the house of Raja Khetlaur M[illegible]un Singh of Bishnupur. The Bishnupur Raja credited the story of the sunnyasi, kept him in his house for about 3 months, and advised him to go to the Magistrate of Bancoorah and consult with him what steps ought to be taken in the matter. The sunnyasi accordingly went to Bancoorah, and lived under a tree, close to the Circuit house as a sunnyasi. A little before that time, there was a disturbance created in the jungle mehals of Manbhoom, a neighbouring district, by the ignorant jungle people. Captain Wilkinson was appointed Political Agent of the place and Captain Hannington as his assistant; and they were sent there with a military force to put down that disturbance.

The place where the sunnyasi lived was daily crowded by a large number of people. Mr. Elliott, the Magistrate of the District, apprehending that a mischief may arise out of the same, went there with the Daroga, Jemadar, Burkendages and others, and arrested him and about one hundred others, kept them in hajut about 8 months, and subsequently committed them for trial to the Sessions Court at Hooghly. The trial came on before Mr. Harrington the Sessions Judge, and Mr. Turton, the distinguished advocate of the Supreme Court of Calcutta, was retained for the

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defence. The charge against the accused sunnyasi was that though his real name was Aluk Shah alias, Kristo Lall Para-Brahmochari he called himself Raja Pratap Chandra, collected his followers, and had thereby created a state of things leading to a breach of the public peace. The learned Sessions Judge found the charge to be true, and the accused sunnyasi was in February 1837 sentenced to simple imprisonment for six months, and directed to furnish security for Rs. 40,000, to keep the peace for one year after the expiry of that period. The sentence of imprisonment was duly worked out, and after the expiration of the term the sunnyasi was released, Babu Raj Kristo Roy Chowdhry and Gopi Kristo Roy Chowdhry Talookdars of Gouripur, District 24-Pergunas, standing security for him to keep the peace.

The sunnyasi then came to Calcutta, and settled that he should first go to Culna and take possession of the Rajbate (Raja's house) there. Before proceeding to Culna he wrote a letter to Government which with its reply is printed below.* Babu Radha Kristo Bysack, Dewan of the Government Treasury, kept him in his house for about six months, furnished him with the necessary funds, (said to be about a lac of rupees) and the sunnyasi went to Culna in a right royal style, accompanied by a large number of men in several Budgerows and boats.† Mr. J. B. Ogilvy, District Magistrate of Burdwan, ordered him to discharge his people and to go elsewhere. On the said order not being carried out the Magistrate, with the assistance of Captain Little whose Regiment was then passing from Hazaribagh to Barrackpur, forcibly dispersed the people and in doing so he had to order the Military to fire which caused the death of three persons. The sunnyasi managed to escape, but was pursued and arrested at Santipur, and sent up to the Magistrate of Hooghly for trial.

* To the Deputy Governor, Alexander Ross.

Extract from Petition, dated 15th February 1838.

"Your memorialist prays, therefore, that your Honor will be graciously pleased to grant to him (through the proper channel) such means of safeguard to protect his person and life from any eventual insult or danger, during the lifetime he may be obliged to stay at Burdwan."

REPLY.

"The prayer of this petition cannot be complied with."

(Sd.) FRED. JAS. HALIDAY,
Offg. Secy. to the Govt. of Bengal.

FORT WILLIAM,
March 5, 1838.

† Rev. Alexander wrote to the Magistrate :—

My dear Sir,—Pratap Chandra has just gone on board his boat, after parading the whole length of Culna in a Tonjohn with a drawn sword in his own hand, attended by upwards of a hundred swordsmen and double that number of sticksmen. The concourse was altogether 6,000 or 8,000. He appeared to be intent on the *Rajbaree* ; but your active Daroga prevented him. The aspect of things, I think, threatens an affray, if he is not checked soon

TRIAL OF THE

SOI-DISANT RAJA PRATAP CHANDRA

OF

BURDWAN.

—:o:—

SEPTEMBER 1, 1838.

Before Mr. E. A. Samuells, Offg. Magistrate of Hooghly.

CHARGES.

The following is a copy of the charges against the accused, son of Shyam Lall Para-Brahmocharee of Ghurnee, a village in the Suburbs of Krishnaghur.

1st Count.—Aluk Shah, *alias* Raja Pratap. Chandra, *alias* Kristo Lall Para-Brahmocharee, for gross fraud and imposture, for falsely and fraudulently assuming the name of the deceased Maharaja-Dhiraj Pratap Chandra, and in pretending in various places, during the last two years, to the great disturbance of the general peace of the country, and in obtaining money from various individuals, and more particularly from Radha Kishen Bysak, Dewan of the Government Treasury in Calcutta;

2nd Count.—And further for having, in furtherance of the fraudulent pretences above-mentioned, instigated and prevailed on diverse subjects of the British Government and others, to the number of 300 or more, and being unlawfully and tumultuously assembled at Culna, in the Burdwan District, from the 13th April, 1838, to the 2nd of May, 1838, and for having set at defiance the constituted authorities of the District of Burdwan, and the said Aluk Shah for having previously on the 4th of August, 1836, been convicted of a similar offence before the Sessions Court of Hooghly.

He was released from Jail on the 3rd February 1837. Raj Krishna and Gopee Krishna Roy Chowdhury tendered their shares of the extensive Taluk of Gouripore in the District of 24-Pergunnahs as security for the release of Pratap Chandra.

DEATH OF RAJA PRATAP CHANDRA.

Before—The most respected Collector of Burdwan.

The written statement of Manoo Lall Purohit is as follows.—

Having received on the 8th of Chyet this year a Purwanah from your Worship to submit a full account in writing as to who gave orders to perform the Sradh of Maharaja-Dhiraj Pratap Chandra Bahadur inhabitant of Bycanta (heaven), and who performed the Sradh of the Maharaja I feel myself honored to give your Worship, the full answer to the questions stated above.—When in the month of Pous this year, the deceased Maharaja of heavenly residence, having fallen ill, went to the bank of the Ganges, the senior Maharaja-Dhiraj Bahadoor accompanied him to the bank of the Ganges at Umbica, I not being able to go on account of illness, made my son-in-law Ghasi Ram Purohit, accompany the said Maharajas. Afterwards the junior or young Maharaja of heavenly residence having somewhat recovered at Umbica, my son-in-law came to me at Burdwan after taking leave. After this, the illness of the said young Maharaja having very much increased, my son-in-law the said Purohit, in accordance with the

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order of the said senior Maharaja Bahadur went to Umbica. Then the young Maharaja having gone to the next world, and my son-in-law having come back from Umbica to me said "In accordance with the permission of the senior Maharaja, I have duly performed the cremation ceremony of the young Maharaja, deceased, of heavenly residence." After this, in accordance with the order of the senior Maharaja-Dhiraj Bahadur I and Sreejut Ghasi Ram Purohit, performed the Sradh and other ceremonies of the deceased young Maharaja of heavenly residence, at Burdwan. Whenever any Sradh ceremony of any of the members of the family of the Maharaja-Dhiraj Bahadur has been performed at the Rajbati, I have, with the permission of the senior Maharaja-Dhiraj Bahadur, performed and am performing it. The original dwelling place of the ancestors of the senior Maharaja Bahadur and of the ancestors of myself was in the West. We are the priests of the Raj family from generation to generation, whenever it becomes necessary to perform any rite or ceremony of them (members of the Raj family), we perform the same in accordance with the rules, tenets, usages and customs of the Raj family and with the current Shastras of the West. I have submitted Your Worship, fully whatever I know from my knowledge.

12th Chyet 1227, B. S.

(Sd.) SREE MANOO LALL PUROHIT.

Jagatmohan Dubey and Mohan Babu had their hands on the corpse from the moment of death to the dressing of the body, 6 or 7 Bengali *ghurrees*.

The face was covered until the *pindee* was placed beside it. It was also uncovered on the pile. Between the death and burning about a *prahar* and 9 *ghurrees* night have elapsed, Ghassi Purohit is dead. Ghassi was the principal person. The pile was formed by propping up small banks earth, placing logs across and heaping on wood above. The height was about a cubit and-a-half from the ground. I have never seen a *suttee* performed. I never heard a widow escaping from *suttee* pile.

Q.—Could not the Purohit have assisted Pratap in escaping from the pile?

A.—If the Purohit could raise dead men from the pile why did he not begin with his own father and grandfather. It was impossible for the Purohit to have smuggled him off, had he been alive. I was present at the death of Raja Tej Chandra. His adopted son Mahtap Chandra put the fire to his mouth. Mahtap Chandra was not in possession of any portion of the estates at the time of Tej Chandra's death.

Q.—Who was Pratap Chandra's heir?

A.—His father inherited the property.

Q.—Have not the widows of Pratap a better claim to the property left by him?

A.—Whether the widows have a prior right to the father, is laid down in the Shastras. I do not know the law.

Q.—Why did not Ranees apply the fire?

A.—The Ranees of Pratap were at Burdwan and he at Culna, how could they apply fire? Sometimes the wives of Hindus go and sometimes they do not, when the husband is taken to the Ganges. I cannot say if Paran Babu went.

Q.—Is it the custom of the Kshattryas that if the wife be present she must apply the fire?

But what the custom of the Burdwan *Raj* family is I do not know.

The funeral pile was burning from two *ghurree* after midnight until daybreak, I was present all the time. I assisted in putting out the fire and I came away. I had no sleep all night. I went to Calcutta next morning. It was dark and not moon-light. I know Gurudas Mukerjee, he was Dewan of Pratap's; I hear that he is dead. He was not present at the death of Pratap. I know the names of several of Pratap's servants, Muni Lal Babu, Madhu Lal Babu, Radha Sarup Chalab, Anup Sing

Jamadar, and Mohan Babu. I do not know Aga Abbas as his servant. I have never heard of his name. Nitto Babu was my elder brother and was a servant of Pratap Chandra, he is dead.

I do not know whether Suratin Sardar, bearer, was Pratap's servant or not—Dhunkristo Poddar was a servant, he is also dead.

Bhagabut Khansama was a servant, and is dead. I do not know if Meetamee coachman was a servant or not, nor do I recollect of Kunjamohan Ghose. I came to Calcutta to receive some money from Kashee Mullick, interests due on Company's Paper. I had been in Calcutta 14 or 15 days, when I heard Pratap's illness, he was not ill when I left Burdwan.

I have seen the portrait of Raja Pratap Chandra; it is like him. There was sandalwood in the pile as I stated before. At about 4 or 5 *ghurree* of the night the body was removed from the *Rajbaree* to the river.

Besides the names given by me already, I do not know of any others as his aid-de-camps.

I do not know any friend of his of the name of Prankristo Haldar, neither do I remember Ramdhone Banerjee. He has a house at Burdwan which he rents to gentlemen.

Peary Mohun Roy—signs the Halapnamah. I knew Raja Pratap Chandra, son of Tej Chandra, when he was ill I was in my own house at Jamalpore. I am not acquainted with anything relating to his illness, but when he was dead I then saw him. In 1227 B. S. on 21st Pous he died. I saw the body of the Maharaja extended on a pile on the Tuppa ghat at Culna. After one *ghurree* after midnight I arrived there. I stood about 2 or 3 cubits from the pile. His face was uncovered, but the rest of the body was covered with cloth. I had before seen the Raja Pratap Chandra, very frequently. I was well acquainted with his features. I am certain that that was the corpse of Raja Pratap Chandra and not of any other person. Ghassiram Purohit put the fire on the face of the corpse. He touched the face with fire three or several times.

The pile was set to fire by several people of the Kshattrya caste, then present. Logs of wood were placed above and below the corpse. I continued to see the corpse after the pile was burning. The fire burned the corpse and blazed very high. I was there until three *prahars* of the night had passed. I went away before the fire was extinguished. The pile was about one cubit or $\frac{3}{4}$ of a cubit-and a quarter from the ground. It was impossible for any one to escape from beneath the pile. About two or three thousand people were present. On all the four sides there were torch-bearers and on three sides were spectators. On the side of the river there were three or four *mussalchies* and one or two servants. There were no spectators on that side. It was impossible for any one to have escaped from the pile without our knowledge. There were many people from Ambica present Bindu Babu, Raju Babu, and Bhairab and others. There were great many people present; but I do not recollect the names of any who were now connected with the *Rajbaree*.

Gopeenath Dutt,—son of Ram Kanai, sworn on the Ganges water. I live in Susnee Muntasa, and am now 48 years of age, Dewan of *Duftar* at Burdwan, of the Kaet caste.

I knew Raja Pratap Chandra. He was taken sick in the month of Pous in 1227 B.S. I saw him frequently during his illness. He had Agneish fever. I never placed my hands on the Raja's body. The Maharaja said that he was very ill with fever. I do not know what the Kabirajes ordered him to eat from one day to another. I did not see any European Doctor there. The Kabirajes were Bremanund Gossain and Jagat Kabiraj and Ashgar Ali Hakim attended. Kabirajes frequently told me that he was very ill and that there were no hopes of his recovery.

I am sure he was ill, and there was no pretence. I recollect his having

gone to Ambica. He was extremely weak when he left Burdwan, he could not move of himself. I followed the Raja on the 16th Pous, but did not go along with him to Ambica. I saw the Raja on the 21st Pous, he was then extremely weak. He spoke very slow, his voice could not be distinctly heard, and he died at Ambica on the 21st Pous 1227 B.S., I was present when he died. I stood about 5 or 6 cubits distance when he died. I am sure that there was no deception. I saw it with my own eyes.

About 20 or 30 Kshattryas were about the corpse. There was no doubt entertained about his death. His corpse was burnt after death. I was present. A cloth covered the body upto the neck, the face remained uncovered, about two or three thousand people were present on that occasion. The Kshattryas were standing near and the rest of the people above on the Tuppa Ghat. The people were standing on the south-east, and west, and on the north was the river.

No one was on the side of river. The pile was about one cubit or one cubit and-a-quarter from the ground. It was quite impossible that any one should escape from the pile either above or below, and that we should not see it. I could see the corpse plainly in the middle of the flames, and numbers could see it. I am sure that it was the corpse of the Raja which was burning in the midst of the fire. There could have been no deception. I was there from first to last until the corpse was consumed to ashes. It was the corpse of the Raja Pratap Chandra. I was constantly in the habit of seeing the Raja every day. I recollect his features very well. I do not know the prisoner. He is not Raja Pratap Chandra. I know this is not the Raja. He does not resemble *him* at all; eyes, nose, stature, age, everything is different.

HIS IDENTITY.

Mr. C. Trower, C.S., Member of the Board was examined. He said that pseudo Protap was not the real Protap.

Mr. H. T. Prinsep, C.S., Secretary to the Government of India, said that he did know Raja Protap about the years 1817 or 1818, that the present claimant was not the real Protap. He did not recollect whether Protap died in 1820 or 21. In 1821 he was Secretary to the Government in the Persian Department.

Mr. Gregory Herklots, stated that he was lately a Sudder Ameen of Hooghly. From 1789 to 1795, he was a writer on the Dutch establishment. In 1807 he entered the British Service, and became an Assistant to the Commissioner.

In 1818 he applied for a Sudder Ameenship. In 1825 when the Dutch Settlement was made over to the British, he was a Sudder Ameen. He also denied the identity of the present claimant.

Mr. James Pattle, C.S., Senior Member of the Board of Revenue said that when he came to Calcutta in 1813, Raja Protap used to pay him visits often of ceremony. The pretender was not the real Raja.

Mr. Hutchison, C.S., a Judge of the Sudder Court said the same as Mr. Pattle. He also deposed to the fact that Raja Protap died either in December 1820 or in January 1821. A Persian letter of condolence was sent by him. He reported his death from his tent in Cutwa. He decided a suit of partnership between the widows of Raja Protap Chand and Ranee Comul Coomaree in favor of the widows.

Dwarkanath Tagore, Esq. swore upon the Ikrarnamah.

Dwarkanath Tagore examined by Mr. Samuells.—I was very intimate with the late Pratap Chandra. When he first came to Calcutta, he resided in a house situated in a lane which was next street in which I lived. The house was called Kanto Babu's house. I was then introduced to him. It was at the time of the peace which followed the battle of Waterloo. He went about to

see the illuminations at Government House and other places, and I accompanied him. He came to Calcutta on several other occasions. I always saw him whenever he was there. I believe that the only native houses he ever went to, were Raja Gopeemohan's and my friend Rammohan Roy's. His rank would not permit him to visit weavers or bankers. From my frequent interviews with him, I have a very correct idea of his features. I do not know who the prisoner is, but this I know perfectly, that he is not Pratap Chandra. I say so from seeing his face now. Although twenty years had elapsed, I should not forget a man with whom I had been so intimate, and I should at least expect to see something like the person; but I might just as well take Mr. Morton or Mr. Shaw for Pratap, as the prisoner. Pratap had no fear whatever of Paran Babu, he looked on him as he would on any of his slaves. I knew Gurudass Dewan; at my recommendation he was appointed Dewan to the Raja. During Pratap's last illness I heard daily or almost every day from Gurudass, and I was about to proceed to Ambica myself, but the death of my aunt prevented me. Gurudass wrote to me that Pratap was very ill, and that the old Raja would not allow the English doctors to attend him, and treat him in the English way; at last I heard he had been poisoned by one Gossain Kabiraj, who had administered to him the *biss golee*, (poisoned pill.) Gurudass mentioned that Pratap had a billious fever. I had not seen him for a year before his death. I knew Pratap's disposition well; he was not superstitiously inclined, nor religious, nor did he ever appear to feel any remorse for the course of life he pursued. He was not at all likely to go on a pilgrimage from fear of Paran Babu or from any religious motive. The Raja Tej Chandra was a pensioner of *his*. The first time I ever heard of his being alive, was when this impostor made his appearance. I do not know Paran Babu at all, nor I am a friend of the present Raja. There is a case pending between Paran Babu and the Ranee Basanta Coomaree, and my house are acting as her attorneys. I know that Paran Babu is my enemy; he has presented a petition to the authorities of Burdwan and insinuated every sort of thing against me. I should wish to see Paran Babu turned out of the management, and another person put in his place so much for my friendly feelings towards him. I assisted Pratap Chandra's widows in their suit against the old Raja Tej Chandra. I do not know anything which would make me more happy than to see that man, my old friend Pratap Chandra again. When Mr. Turton first told me of this pretender and wanted me to go and see him in the Hooghly Jail, I told him that it was quite impossible that Pratap Chandra could be alive; and I gave Mr. Turton a few questions to put to the prisoner in order to try him; and I said that if the prisoner could answer these questions it might probably induce me to go and see him. Mr. Turton told me afterwards, that he could get no answer, for the prisoner did not recollect any thing of these matters. From this circumstance, and what I saw of the prisoner in the Supreme Court, when he was examined in Ogilvy's case, and what I see of him here, I am quite convinced that he is not the man he pretends to be. I heard his voice in the Supreme Court and observed his manner, it was not Pratap's, who never spoke in that way.

Cross-examined by Mr. Morton.—I was sitting next to you in the Supreme Court during Pratap's examination. I heard the answer which he gave you. It is quite true that I would not consent to go and see him. I had made up my mind that he was not the man before I saw him in the Supreme Court, and when I saw him there, it only strengthened the opinion which I had formed. It is quite true that he did on that occasion point me out as Dwarkanath Tagore; but what of that?—I could not point him out as Pratap Chandra. The question as to whether he could point me out was put by you to him at

my suggestion. I knew that I had never seen the man before, and I thought it not unlikely that he had never seen me: If he had seen me, how could I help it? it was only one way to try him. There are at this moment many people in this room who know me by sight but whom I do not know. It was my confidence that I did not know him that made me suggest the question to try if he knew me. My features may be a good deal altered since the battle of Waterloo, but those who knew me intimately then would recollect me now. My intimacy with Pratap subsisted for four or five years. I only saw him when he came to Calcutta, and whenever he came I saw him. I was on most confidential and intimate terms with him, so much so, that he appointed the Dewan of all his affairs at my recommendation. He used to laugh at all superstitious affairs. He may have had a good many sins to repent of. When he first came to Calcutta, which was after the battle of Waterloo, he remained, I think, about a twelve month. He then came a second time, and stayed four months. He came several times after that, and stayed a week or a fortnight, or more. He used to stay at Short's Bazar. I have known instances of natives leaving their family for a number of years and returning, but never after they were burned (great laughter.) The estate of Krishna Chandra Singh is in my hands. I have the management of it. I know the family well. I never heard of his mysterious disappearance. Lala Babu went to Brindabun and turned a religious, ascetic withdrawing from business. His son was a minor, and the whole estate according to custom in such cases was taken by the Court of Wards. I farm it from the Court. A great many of the principal acquaintances of Pratap were in my own service. Mr. Stewart, the member of the Council, was a great friend of his. I have seen their correspondence. Pratap once went to Raja Gopeemohan's house; it was beneath his rank to go to weavers, or bankers. He also knew Sreenath Babu, and Ramdhone Banerjee. I knew very little of Pran Krishna Haldar at that time. The father of Sreenath was one time in the service of Pratap's family. He looked on Sreenath as his servant. Sreenath would therefore have been obliged to give Pratap *nazars*, which the Calcutta people do not like doing. I have advanced money to support many suits. I advanced money to these very young Ranees, Pratap's widows, in their suits against the old Raja Tej Chandra. I always know the persons to whom I advanced money, and their cases, and I always take very good care to secure myself. I never bargained to receive a large sum of money back, except in one case, that was Baroda Kant Roy's, whereof I undertook at my own risk all the costs of the suit, both here and in England. For doing this I was authorized by the Board to receive one-third of all I should recover. Radhakishun Bysak, Joynarain Chunder, and Govind Chunder Dey all came to me about this case of the impostor. I told them it was a *jal* case. If I knew that he was the real Raja, I would gladly give five lakhs of rupees out of my own pocket to support him. Was he not my friend?

Dwarka Nath Tagore.—Mr. Morton, something has passed in the newspapers about a letter received by me from Mr. Samuells. I have come here on purpose to answer any questions you may like to put to me on that subject.*

Hooghly, Sept. 4, 1833.

"My dear Dwarkanath,

I was disappointed at your non-arrival, as I think you could speak more decidedly than any of the other witnesses to the man's non-identity, but it is not of much consequence. I have no objection to make a bargain with you. I will let you off altogether, if you will procure me the names of half a dozen good respectable witnesses from Boranagore, who know him as Kristolall. I dare say you could do this through Kali Nath Roy Chowdhery, Mothooranath Mookerjee or any of your own servants. Let me know what you say to this. What scoundrel that Buddinath Roy is! If I had known his character, I would rather have gone without evidence altogether than have had his.

Mr. Morton.—I have no question to put to you on that point.

The Magistrate.—In that case I shall put some questions to you.

Dwarkanath Tagore.—I hope the gentlemen reporters whom I see here, will take a true statement of what passes, and not publish a false account, as they did about me the other day, stating that I did not attend because I had been taken ill with spasms. I was not taken ill.

A Reporter.—We published that, because we were told you had been taken ill. We could not know it ourselves, as you were not here.

Dwarkanath Tagore.—Whoever told you so, told a lie.

The Magistrate.—State what you know about that letter.

Mr. Morton.—Surely this forms no part of the present investigation.

The Magistrate.—I have before said that this is only a preliminary investigation to ascertain if the prisoner should be put on his trial. I shall therefore inquire into any matter whatever connected with the case or these proceedings.

Dwarkanath Tagore.—On the same day or day after that I received your subpœna, Govind Dey, Mr. Graham's writer, brought me a letter from his employer. I was certainly surprized, as it contained a request that I would call at Mr. Graham's office, although I know little of him being not, on visiting terms with him. Govind told me that it was connected with this inquiry. Luckily Mr. Judge, my attorney, was then in the office, so I sent for him, not wishing to speak to *my old friend* Govind, but in his presence. (*Govindo's not very comfortable-looking face did not beam more pleasantly at the tone and manner in which this bit of evidence was given.*) When Mr. Judge came into the room, I said to Govind, I tell you before Mr. Judge that I will not see Mr. Graham on this matter, and I will have nothing to do with his *jaul* case. Govind smiled and said, I thought this would be your answer. As *my old friend* Govind is standing there, I should wish him to be examined on this point. I received a letter from you (the Magistrate) regarding the evidence in this case. I will state the circumstances which led to your writing to me. As I have already mentioned, I had been subpœnaed to attend on Monday, I therefore wrote to you to say, that as the overland was in and my partner, Mr. Prinsep, absent, and we had to answer our correspondents on that very day, I hoped you would excuse me. I also told you, that I could point out better evidence than mine, and I trusted that you would dispense with me altogether. I had mentioned this subject to you in the Supreme Court during Mr. Ogilvy's trial and told you the names of several persons who knew who the prisoner really was. You probably forgot these peoples' names, for in consequence of my letter, you wrote to me for the names of these persons, and stating also, that you thought you would not require my evidence. I have since found out that a copy of this letter of yours to me, has been obtained out of my office. There is nothing wrong in the letter, and I do not care who sees it; but as a copy has been obtained in this manner, I am doing all I can to find out who stole it. Joynarain Chunder, Mr. Shaw's head-writer, was for a very long time at my office on the very day or next that I received this letter of yours.

Mr. Shaw.—This ought not to go on. It has nothing to do with the question, It is a charge against me.

Dwarkanath Tagore.—I am making no charge against you, Mr. Shaw, and do not say that you stole the letter, I never saw you that day.

Mr. Shaw.—It is a charge against my writer.

The Magistrate.—Mr. Shaw, I cannot listen to you. The prisoner's Counsel is here, and I will only permit him to take objections.

Remember I must have the evidence from Boranagore within a week or so. Persuade Mothooranath also to come. His *hoormut* and *izzut* shall be *hureek soorut se behal.*

Yours truly,
E. A. SAMUELLS."

Mr. Shaw.—All this about the letter, and Joynarain Chunder and Dwarkanath Tagore's office, has nothing to do with the charge against the prisoner, I protest.

The Magistrate.—I will not permit you, Sir, to interrupt the proceedings. While your Counsel is present, I order you to desist.

Mr. Morton not interfering Dwarkanath continued his evidence.—When Joynarain Chunder came in, I had your letter (Mr. Samuelss') in my hand, or on my desk. Joynarain began talking about how Raja Buddinath had been interrupted, and use on his going to Hooghly. Prasanna Coomar was present. I said to him, I have no time to listen to all this idle story, take Joynarain Chunder into your room. When I left, he was still in the office, and I do not know how long he continued there. I never have advanced money in a case similar to this. I told Radhakrishna Bysakh, that this man was an impostor, and that he would lose his money. When Mr. Clarke had an interview with Mr. Ross, I mentioned to him the names of the persons who knew the prisoner. He reported this, I believe, to Mr. Ross.

Mr. Clarke, who had accompanied Dwarkanath to Hooghly and was sitting next to him, seemed to dissent from this. Dwarkanath spoke to Mr. Clarke, who said as the Magistrate had taken down what he had stated, he had better sign his deposition first. This having been done, Dwarkanath then spoke to Mr. Clarke and added, I now remember, I had called on Mr. Clarke and found him out. He immediately afterwards came in, and he told me he had been at Mr, Ross's. In speaking of the Culna affair, I mentioned to him the names of the persons who knew the prisoner. This was in May last. Mr. Clarke tells me he had not reported it to Mr. Ross.

Mr. Clarke.—In fact I have not seen him since.

Radhakissen Bysack sworn.—I am a tauntee by caste. I know the defendant Raja Pratap Chandra. He has told me that he is the Raja Pratap Chandra. After making enquiries I have given him money. I gave it to him because I believed him to be Raja Pratap Chandra. I got a bond from him for 16,000 rupees two years ago. I have given more but I have not made up my accounts. I have given about 3, 4 or 5,000 rupees over the 16,000. This is for his private expenses. I have not made up my accounts of what I have spent in his cases. I have given acknowledgments to the amounts of 2,500 in cases, I have never given more. I have not got bonds above 16,000 rupees. There is no bond in my son's name. I have never received bonds at any time either in my son's name or my own for larger sums.

Mr. Morton here said he believed the other bonds alluded to were annexed.

Mr. Samuells said he did not know how that might be, but he had bonds in his possession to the amount of very nearly 22,000 of rupees, of which the greater part was in favor of Radhakissen.

Evidence continued. I do not know that any other bonds were ever written. I now enter the bond for 16,000 rupees which I spoke of Maharaja Pratap Chandra to Radhakissen Bysack and Edward Hildar, for 16,000 rupees.

Cross-examined by Mr. Morton.—I believe this man to be the Raja what others told me, not from his own statement, I gave the the money upon his representations. I gave Rs. 16,000 as a loan. If I can't get it, it is no matter. I have formerly made loans to gentlemen. I have had great hopes of being paid, and have as much chance of getting this money back as I have had in other cases. All the money I have lent to this man is secured by bonds and hand notes. I made many enquiries before I lent this money; when Dr. Halliday told me that this was the man, then I lent him the money. I have seen General Allard. He is now in Lahore. I placed great confidence in what General Allard said. General Allard said that he saw this man in Lahore,—and he told me that he was the Burdwan Zemindar's son and told me to take care of him. General Allard said that he had

seen him in Lahore two years before. I don't recollect what year he mentioned. I saw General Allard in 1836. He did not tell me how long before it was. He went home in 1834. Raja Gopeemohan Deb knew; he is dead. I formed my belief from what he said also. Raja Gopeemohan Deb did not say anything of having seen him himself. He mentioned what a servant of his had said. My brother went away and came back about 12 years after. He was in Bindrabund. When he went, he told me he was going to Bindrabund. Many people have their houses, and no one knows where they have gone. When Raja Pratap went away, I heard nothing of it. When he came back I made great enquiries. I thought the prisoner's story extraordinary at first. People go away and return to their houses in conformity with the precepts of the shastras. Men do this for pilgrimage and penance.

Re-examined.—It is not the custom of my country for dead men to roam about the country. If the prisoner had told me that he was Kristo Lall, the Brahmacharie's son, I never would have lent him 16,000 rupees. If this prisoner can not obtain the Burdwan estate, then my money will go. I will have great profit, if I can prove him to be the Raja. My name will be very great.

Ganga Prasad Tewary:—A Brahmin of Jessore, stated that he knew Kristo Lall Paree. He was his female cousin's son.

The name of the defendant is Kristo Lall Paree, son of Shyam Lall Paree. I have not seen him for the last 5 or 6 years. He was an *omedar* in the Courts of Krishnaghur and Burdwan. I heard that he had obtained a purwanah to act as Daroga in Santipore. While at Burdwan he lived in the house of Ram Chandra Mittra of the Burdwan Collectorate. Kristo Lall had two brothers, Gour Lall and Roop Lall, and both are dead. I heard Gour Lall was called Chhota Huzur. His mother died a year ago. His mother's name was Munnah. He had his maternal uncles, *viz.*, Shib Prashad Tewary, Madan Tewary, Fakir Chand Tewary and Sarup Tewary.

Ram Chandra Biswas of Ghurnee, a village in the Suburbs of Krishnaghur, the head-quarter station of the Nuddea District, stated "that Kristo Lall was his class-fellow. They read together in a school which was held in Ram Comal and Ram Tanu Bahadur's house. He then stated that "we left the school in 1825 or 26; we were then of about 16 or 17 years of age. After that Kristo Lall studied Shastras under Hurra Bhuttacharjee and Bhairab Bhuttacharjee. Kristo Lall learnt English. He identified the prisoner as Kristo Lall.

Ram Tanu Bhadury of Ghurnee stated that the prisoner was like Kristo Lall, but his colour was not so clear as that of Kristo Lall.

Iswar Chandra Chatterjee of the same village swore to the fact that the prisoner was Kristo Lall.

Madan Chuckerburty and Ganga Govind Banerjee made a similar statement.

Prem Chand Banerjee, Nazir of the Magistrate's Court, stated that he came to Krishnaghur in 1823 with Mr. Macfarlan, and in 1825 was employed as a Daroga. In 1831 he was promoted to the office of Nazir by Mr. Piplee Smith. He identified the prisoner.

Ram Gopal Mookerjee, an inhabitant of Goari, (the northern portion of the town of Krishnaghur) who became afterwards Government Pleader, deposed to the identity of the prisoner. He stated, that one Brahmin told him that strong measures were being taken to insure Kristo Lall becoming Raja. The Brahmin told him that, if Kristo Lall got the Burdwan Raj, he (Ram Gopal Mookerjee) would be appointed as a Dewan. Kristo Lall's father used to say that his son would be a Raja.

Ram Chand Mitter, Mohurrer of Burdwan Collectorate, stated that he knew this defendant Kristo Lall; this man now and then used to live in his Toila Marooar the lodging house, when this man last went to Burdwan and reported that he is the Chota Raja. On hearing this instead of making publicity I told him privately that he did not come to me.

Mr. Daniel Antonio Overbeck, sworn by the Magistrate.—I am now a resident at Chinsurah. I was formerly a resident or Governor under the Dutch Government from the year 1817 to 1826. [The witness here begged to inquire whether this was a Civil or Criminal Court of Justice, and who was the party against whom his evidence was required. Mr. Samuells said, that he must be aware this was a Criminal Court, and that the accused would be presently pointed out to him.] I was acquainted with a person of the name of Pertaub Chunder, who came occasionally to see me at Chinsurah. I don't know that I could recognize Pertaub, it is so very long ago, about 20 years, since I have seen the man, and the people of this country generally alter very much in a few years. How can I tell who the prisoner is? I don't know him. About 18 months ago, I saw him in the Hooghly Jail, where I met other gentlemen, since that time he has very much altered. I cannot swear, but to the best of my recollection he is not the man who visited me, and I cannot recognise this man as Pertaub Chund. I cannot swear positively one way or the other. I thought that he was not the man at the interview in the Hooghly Jail. He looked like a mendicant on whom a few pieces of cloth had been put. But I thought too, that he was a little taller, about an inch or an inch and half, and his colour darker. You will please to remember that when I saw the young Rajah he was about 22 years of age, and that man shown me is, I understand, about 40 or more. That makes a great difference. Yes, I did ask him some questions at the interview regarding our former acquaintance. He seemed not to know me, and not recollect my name. I really do not know if he recollect any former circumstances; I believe not [*Mr. Overbeck was now, at his own request, taken to see the portrait in the adjoining room*]. I have seen the picture in the adjoining room. I believe the likeness to be that of Pertaub Chund young the then Rajah. I never saw the picture when it was finished. I cannot say whether it is like, as it is now 20 years ago. Considering the difference of age, of the picture, there is, I think, an evident likeness between the prisoner and the portrait. The shape of the nose, the eyes, and most of the outlines are alike. I do think the colour of the eyes of the picture and this man at the bar are the same brownish black.

The Reverend W. J. Deer sworn.—[The witness and the prisoner were sent to the adjoining room in order to afford Mr. Deer an opportunity of inspecting his features, and remained a short time there together, accompanied by Mr. Graham.] I am a Missionary of the Church Missionary Society, resident at Kishenaghur. I removed to Kishenaghur in 1892.

Q. Were you at any time acquainted with a man named Kisto Lal Pauru?

A. Yes, His father, Shamlal, came to see me and asked me to allow his two sons to be introduced to me. Kisto Lal, eldest of the two sons, made his visits very frequently and asked me for a recommendation for a darogaship. I gave him one to Mr. Battpe, then Acting Magistrate in Kishnaghur, but the Magistrate in his reply said, the man whom you recommend for the darogaship is an unfit person for the situation. My Umlahs have told me that he has been suspected of having been the ringleader of a gang of robbers. Kisto Lal repeated his visits afterwards, until I told him to come to me no more.

Q. How long is it since you last saw Kisto Lal?

A. I have not seen him since 1832 for I left this for England in 1833.

Q. Have you any means of knowing what became of Kisto Lal?

A. No, I have none. I returned from England in 1835. In 1836, when the prisoner was brought to Hooghly two men came to me who said Poraen Baboo has sent them to me and that he was very anxious I should go to Hooghly and identify the prisoner. He begs

this favour of me because I was a friend of his before. He offered me travelling expenses; but I told him I was unwilling to meddle in so unpleasant an affair. I neither wished to have money in such a case nor to go to the Court on any account; but as a friend of theirs, I promised to give them information, and consequently I sent one of my people to Shamlal, Kisto Lal's father, and said I would like to see his son again. His father said he was very glad and he would send his son, but that he was then absent, he had gone up the river to get some money from his disciples. Sham Lal said that his son would return in about 10 or 12 days. After 15 days were past I sent again to the father; he then replied," "if the Padree wishes to see my son let him seek him himself."

Q. From your former acquaintance with Kisto Laul, do you think you should be able to recognize him if you see him again?

A. I recollect Kisto Laul very well.

Q. You have examined the prisoner and do you know who he is?

A. No.

Q. Is that Kisto Laul or is it not?

A. According to my recollection, he is not. Kisto Laul was much fairer than he is. It is now six years since I have seen him and he may have altered, but I cannot recognize him.

Q. How used Kisto Laul to dress when you knew him?

A. His dress was the same as that of the Umlahs. The prisoner is exactly the size of Kisto Lal but his features I cannot recollect.

Q. Did Kisto Laul wear his hair long or short?

A. He wore it plaited like a woman's and back from the forehead. He had a high forehead.

Q. Were you acquainted with Mr. Krukenberg, a Missionary in Kishnaghur?

A. I was.

Q. Where is he now?

A. He is in one of the Eastern Islands.

Q. Do you recollect any Journey of his to Hooghly in 1836?

A. Yes, I was then in Kishnaghur.

Q. Do you recollect the purpose of his visit?

A. His wife was ill and on her account he came to Hooghly.

Q. Did you see him after his return?

A. I did.

Q. Had you any conversation with him regarding his visit to Hooghly?

Mr. Morton objected to this being evidence. Mr. Samuells said:—"I have shewn that Mr. Krukenberg is out of the country, and that his evidence is not procurable, I therefore give you the next best evidence which can be produced." Mr. Morton asked if Mr. Krukenburg had been judicially examined upon oath when he saw the prisoner. The Magistrate said:—"No; but that every thing that passed at the interview had occurred in the presence of the Commissioner and himself (the Magistrate). Mr. Morton then asked whether a commission could not be issued to the Eastern Islands for the purpose of examining Mr. Krukenberg. The Magistrate replied, that such a proceeding would take up a great deal of time and was perfectly out of the question, and reminded Mr. Morton at the same time, that this was merely a preliminary investigation, and that such a proposition might with more propriety be made to the Judge. Mr. Morton then asked the Magistrate to make a note of his objection, and then the Magistrate replied that this not being Judge's Court, it was not usual to take notes of objections, and that the usual course was for the defendant's counsel to embody any objections which they might have, in a petition which would be duly filed amongst the records of the case.

(*Mr. Deer's Evidence resumed.*)—Mr. Krukenberg said, that he had been called to see the prisoner, who called himself the Rajah Pertaub Chund. He said he had spoken to him and was convinced he was the very man he had seen in the house of Sham Laul at

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Gwarry Kishnaghur, and that he was willing to go and give evidence of it.

Q. Did he mention what man he meant he had seen at Sham Laul's ?

A. He said the person who used to be there as a fakeer.

Q. Did he mention his name ?

A. Not that I recollect.

Q. Do you know what character Kisto Laul assumed when he was with his father ?

A. No. I do not.

Q. To whom did you understand Mr. Krukenberg to refer ?

A. To Kisto Laul.

Q. Are you quite certain that this is not the Kisto Lal you knew ?

A. It is a mere impression. It is six years since I have seen him.

Q. Could you swear positively that this is not Kisto Laul ?

A. I could not. The size is alike, and the features are very near, but they are altered according to the image which I had formed of Kisto Laul.

You went to England, I think you said, after your acquaintance with Kisto Laul ?

A. Yes. The next year in 1833, and remained two years.

Q. During these two years did Kisto Laul frequently recur to your memory ?

A. Yes, I remembered him often.

Q. Were you much occupied at home ?

A. Yes. I was occupied in setting my family affairs.

Q. Do you consider that absence and hurry of business are apt to weaken impressions or to strengthen them ?

A. It is natural that they should weaken them.

Q. How often did you see Kisto Laul ?

A. I can't say. He used to come daily for several weeks until I ordered him away.

Q. Do many other natives visit you ?

A. A great number.

(Cross-examined by Mr. Morton).—Q. Have you been many years in India ?

A. Yes; I came out in 1819.

Q. I suppose you have had a good deal of experience in native physiognomy ?

A. No; I have not studied it much but I have had some experience.

Q. Before seeing the prisoner at the house had you any doubt of your being able to recognize him ?

A. Yes, I had, because I knew that Kisto Laul was fair, and I had read in the papers and the prisoner was darker than the Rajah of Burdwan, whom I also knew to be fair ; on that ground I formed doubts.

Q. Putting aside the fairness, had you any doubt ?

A. Yes I had a doubt, as it is now six years since I have seen him.

Q. Is your recollection of persons in general pretty good ?

A. Not very. I frequently make mistakes.

Q. Do you judge from the features and complexion only ?

A. Kisto Laul was very thin when I knew him, thinner than this man.

Q. Do you know of your own knowledge whether Mr. Krukenberg had any opportunities of knowing Kisto Laul ?

A. Yes; from what I heard from him he had opportunities of knowing Kisto Laul.

(Re-examined by the Magistrate).—Q. You say that he was thinner. Do you think that living upon the fat of the land tends to make a man fatter or thinner ?

A. I can't say. Medical men might tell better than I, but I should say stouter.

Q. Did Kisto Laul live like a Rajah, or in what style ?

A. In a middling style. They were neither rich nor poor people.

Q. Would a native or a European recognize a native countenance best ?

A. The natives know each other much better than we do.

At this stage of this business of the day Mr. Morton enquired if the native

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witnesses who had given evidence were detained, and whether they were compelled to give security. The Magistrate replied, that several belonged to the Kishnaghur kutcherry and must therefore be returned there; but that all gave security to appear before the Sessions Judge if called upon. The Court adjourned at about 2 o'clock for half an hour.

Ramchunder Biswas was called and said, that he felt himself very unwell, and that he could not give his deposition today, Paul Christian the next witness, was therefore called.

Paul Christian, son of Gour Mohun Chuckerbutty, live, at present at Goaree Kishnaghur, Zillah Nuddea, aged 28, profession a Catechist of the Church Missionary Society, *sworn*.—I have been living at Kishnaghur since the year 1833. Before 1833, I once went to Kishnaghur. I do not know Kistno Paurn, but I know one Kisto Laul Bremacharee, his father's name is Sham Laul, *alias* Summanund Bremacharee. I do not know what profession he used to follow; but he had Kalee Thakoorain in his house, and the people who came to worship used to give him something: the boats also which came to the Gunge used to give him a per centage or their goods and that was the very course in which he lived. I knew Kisto Laul when he used to associate with Mr. Krukenburg and Mohes Chunder Pundit. His father took Mr. Krukenberg, Mohes Chunder and me into a room to the west of the place, where the image of Kali was, and told us to sit there and argue with his son and that he should be well pleased. We did argue with the son Kisto Laul for about two Bengalee ghurries. When we went home the Padree said, that he had not discovered the religious principles of this man sufficiently, and that, therefore we ..... again next day. Next day we three went again, and in the following day we went again, and on the four succeeding days, I myself went alone; and shortly after that Kisto Laul was not seen at Kishnaghur. After the death of Sham Laul there was a proclamation for calling.....his heir to appear, and if he did not appear within 10 or 15 days.....property will be sold. From these seven interviews I have a collection of Kisto Laul. The prisoner appears like Kisto .....I saw him once in the Jail, but since then his face has grown with stouter, and when I saw him at Kishnaghur and in the Hooghly ..... he had a beard, and his hair was turned up like that of a woman of Mohesh pundit and several gentlemen were with me when I went to Hooghly. I said at that interview, that the face was like that of Kisto Laul. On that occasion I told the Commissioner that this man was like Kisto Laul, but I could not ascertain and to a certainty, in the course of ten days. Mohesh Pundit had asked him in Kishnaghur if he had not seen him once before at Telmarowe in Burdwan. He laughed and replied, that must have been when I was in some former state of existence. I reminded him of this when I saw him in the jail. He did not reply, but his face got grave as though from fear. When the Commissioner first introduced me to Kisto at the jail, he then also showed signs of fear, and when told by the Commissioner to tie up his hair, he would not do so. He is now much stouter and his colour darker, and the wrinkle in his face is deeper, otherwise he is precisely the same Kisto Laul, whom Shammanund Bremacharee pointed out to me as his own son. I do not know what his family name may be. I have heard in Kishnaghur that Sham Laul was called Sham Laul Pauru or Padheea Bremacharee. Bremacharee is his religious title. I saw him in Kishnaghur in the end of 1833 or beginning of 1834, but I cannot say in what month of 1836 I saw him in Hooghly Jail. I had not seen him for two years when I saw him in the jail. I could recollect a man after two years. There is a little difference in my recollection, but I do not forget in that time.

Cross-examined by Mr. Morton.—Kisto Laul's face was darker in 1836 than when I saw him at Kishnaghur, and now he is stouter, and has wrinkles, which then he had not. Yes I can swear that

this is Kisto Laul, whom I saw in 1833. I have seen him in 1836 while the change which I have spoken of was taking place. He is not much changed only a little.

I understand English, but I prefer giving evidence in Bengallee. I do not know whether the prisoner knew English; but when Padree Krukenburg spoke English, the man laughed, as if he nnderstood what was being said. Padree Krukenburg and I generally spoke in Bengallee, but when he could not understand anything I explained it to him in English. Mohesh Chunder pundit was present 3 times with me, but not the 4 times that I went alone. I do not know if he is alive. 3 months ago I received a letter stating that he was at Burdwan. I am quite sure that Mohes pundit did not die 5 or 6 years ago. A Mohes pundit at Kishnaghur did die, but the one I speak of is an inhabitant of Burdwan. I did tell the Commissioner that the prisoner was exactly like Kisto Laul.

Q.—Did you tell the Commissioner he was actually Kisto Laul?

A.—There were no questions asked me and I merely remarked that he was like Kisto Laul. After the interview, I considered the matter in my mind, and was satisfied, and I now swear positively that this is Kisto Laul. If I did not at the interview at the jail think this man was Kisto Laul, why should I say to the Commissioner that he was like Kisto Laul? Amongst the natives I have never yet seen two Bengallees perfectly like each other. There is always a difference. I did not ask him his age in 1823, from his appearance at Kishnaghur he was about 32 or 33 years. His face changed from fear at the jail on my questioning him. I never saw him after the seven interviews. He disappeared in 1834. I do not know if any enquiry was made after his disappearance about 5 months ago. The proclamation was made desiring the heirs of Sham Laul to appear. I never mentioned the matter to any Bengallee that the Rajah was a false man. I had no occasion to do so. I was at Burdwan a catechist before I went to Kishnaghur. I resided at Konejenathsal. I had a house of my own. I was with Mr. Deere and Mr. Whitebreck, the padrees. I left Burdwan in January 1833, and went to Kishnaghur. I went to Calcutta in 1837 to learn Greek. I went in 1833, two or three times to Calcutta. I do not know what respectable people are at Kishnaghur that know Kisto Laul Paree. I told the Commissioner that I would inform him after 10 days, but as he did not write to me, I did not go. In what month I saw him in the jail I do not know. I did not know whether his trial had been taken place or not. After I had left the jail I heard from the people that sentence of 6 months' imprisonment had been passed on the Rajah.

I was present at the jail, with Mohes pundit, the Commissioner, the Magistrate and Dr. Wise. The Commissioner .....for me to look at the prisoner. He did not tell me why.....look at him. Kisto lived to the west of his father..... .....house at Gowarri. The cutcherry is *about* half.....from the place. How can I tell whether he is well known .....—the Police people or not. I don't know how long he .....there, but he was there when I first went to Kishnaghur.....

We went to argue with him on religious points.....constantly to all. We argue in houses, in streets at..... .. Of course I recollect a man with whom I had talked.....very particularly on religious subjects, and in which..... .....been so often. I spoke to Mr. Krukenberg, who said.....had seen the prisoner and that he was of opinion that he was Kisto Laul. I said that was my opinion also.

HOOGHLY, THURSDAY, 20TH SEPT., 1838.

ELEVENTH DAY'S TRIAL.

This morning, at about half past 10 A.M., the Magistrate entered the Court when there appeared no more witnesses for the prosecution. The deposition of one Bremanund Gossyna (since deceased) taken at Bankoorah, was put in

and read by the Sheristadar of the Court in the Persian language.

Mr. Morton asked the Magistrate whether the charge in that case was the same as the charge in the present case, because if it was not, he submitted that this could not be received as evidence.

Mr. Samuells Magistrate said, that there was then no charge, but that the investigation at Bankoorah was, like the present, merely preliminary, and the evidence related to the question of identification or non-identification.

The deposition was then read, in the Persian and Bengali languages, and the Magistrate interpreted it into English. This witness was a Coberaj, who attended Pratap Chand during his illness, and swore to his illness and death. The other document was then put in, upon the same ground, viz., that the present was a preliminary proceeding. Mr. Morton made his objection, but the Magistrate said, that it ought to be reserved for the Judge's Court, and he added, that this was an official document, and according to the Mofussil practice, and he thought according to the practice in the Supreme Court, good evidence, as the official seal of the Sheriff or Nazir proved itself.

Mr. Morton said, that he did not question the genuineness of the document, but that the objection went to its admissibility as affecting the prisoner.

The document referred to was then put in. It was a statement by Munnee Laul Purohit, officially addressed to the Collector of Burdwan and filed in a suit called "Kurreech Dakel," in which Munnee Laul stated, that another priest had told him that he was present at Raja Pratap Chand's death.

Mr. Morton could not help remarking, that this was a mere statement of a statement of another individual.

Mr. Samuells said, that in fact it was not put in as evidence of the death of Pratap, but merely to show for what reason Ghassyram was the officiating priest on that occasion, and not Munnee Laul, the family priest.

The Magistrate said, that he should now commit the prisoner at the bar, and with him others now in Hooghly jail, to take their trial before the Sessions Judge, and the day of trial (which however might be altered by the Judge himself) he should at present fix *for the 1st day of November next ensuing.* The holidays would not terminate until the 24th October. He intended to commit 18 others to take their trial with the *soi disant* Raja; the rest would be more leniently dealt with, and would receive sentence from the Magistrate himself. A regular indictment would be prepared some days before the trial came on, and a copy of this might be furnished (upon application being made) to the prisoner, and those who conducted his defence.

Mr. Morton enquired, whether the substance of the intended charge could be given by the Magistrate now for their guidance and their consideration in making future arrangements.

Mr. Samuells said, that the prisoner might gather the substance from the evidence, which had been heard. The indictment would be for assuming a false name, and to this would be added the charge of resisting the local authorities, and probably that of obtaining money by his false representations. Mr. Morton further enquired, whether in the present proceedings any evidence whatever had been gone into relative to any alleged disturbance of the peace or resistance to the civil authorities.

Mr. Samuells replied, that he considered all the proceedings, past and present, as one and the same, and much evidence had been given upon this matter before the case was commenced, which had reference to the prisoner's assumption of the name of Pratap Chand.

The charge of the breach of peace would probably be the second count of the indictment.

Mr. Morton also enquired, whether, after committal, the case would be entirely transferred to the jurisdiction of the Sub-Judge, and whether application for the bail ought now to be made to Mr. Morton then put in a petition on

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behalf of his client containing the names of three European witnesses intended to be examined at the trial, residing at a great distance, and requested permission to reserve the remainder for some future occasion. These subpœnas were granted, and leave given to reserve the rest to be named before the trial came on before the Sessions Judge.

The prisoner was then informed in Hindoostanee and Bengalee, that he was committed over to the Sessions Court to take his trial, before the Judge of that Court, upon matters on which evidence had been given before the Magistrate, on the part of the prosecution. Eighteen other witnesses were then brought up from the Hooghly Jail, who answered to their names (but denied being at Bankoorah) were committed upon a charge of disturbance and breach of the peace. One of the prisoners, who had been bailed before, was ordered to renew his bail to the amount of 500 rupees, and we understood him to be the mooktear of the *soi disant* Rajah.

Mr. Morton thanked Mr. Samuells for the courtesy and kindness which had been extended to him throughout the investigation.

The Court adjourned about one o'clock (*a*).

(*a*) When this case was committed to the Sessions the real trial took place in that court and what was done in the court of the Magistrate was nothing but an enquiry. All the witnesses both for the prosecution and defence, were examined in both the courts. By publishing their evidence twice, given in two courts, the bulk of this book will be unnecessarily increased. It has therefore been decided to publish the evidence of all the witnesses in the Sessions Court and the evidence of only a few prominent persons recorded in the Magistrate's Court.

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HOOGHLY SESSIONS COURT, NOV. 19, 1838.

(Before James Curtis, Esq., Sessions Judge, and Moulvy Syud Ahmed, the Mahomedan Law Officer of the zillah.)

Government v. Kistolal Bramacharee Panda, *alias* Aluck Shah *alias* Pratap Chandra, Joomun Khan, Kally Prasad Sing, Rada Kisto Ghosal, Sagur Dhur, Raja Narohury Chund Roy, and Hafiz Futtehoolah.

CHARGE.

Charge, Count 1st against the 1st prisoner, of imposition, in assuming the name and title of Dhe Moharaja Pratap Chandra Bahadur, late zemindar of zilla Burdwan.

Count 2nd, of extorting money under the aforesaid false pretence from Radha Kissen Bysak, Dewan of the Government Treasury.

Count 3rd, of assembling, unlawfully, a large and tumultuous body of men on the 2nd of May 1838, at Culna, in the zilla of Burdwan. He the said prisoner, having been previously convicted on the 4th of August 1836, of a similar breach of the peace, and sentenced by Mr. Harington, the Judge of zilla Hooghly, to 6 months' imprisonment in the zilla jail, from whence he was released on bail after the expiration of his sentence.

Charge against the other prisoners; of aiding and abbetting the first prisoner in the commission of the said illegal acts.

Counsel for the Prosecution M. A. Bignel, Esq.

In this case, the Sessions Judge had issued summons for the attendance of a Special Jury to try this case, in conjunction with him; but as the case is likely to occupy the Courts time for nearly two months, all the jurors, with the exception of one person, named Babu Anuda Persad Bondopadhya, zemindar of Teleeneepara, sechned attending, on the plea that their daily attendance at the Sessions Court for 2 months would completely withdraw them from usual duties, which would, by so long a discontinuance of their attention to them, be neglected, and they be the sufferers thereby; and further, that even if they were willing to sacrifice their interest on this point, to accommodate Government, they could not answer for the casualties of sickness, &c., intervening in this period. As the Government Regulations in existence in the Mofussil Courts could not compel the attendance of the Jurors thus summoned, the Sessions Judge, in failure of a complete jury was necessitated to abandon his original intention on this point, and try the case with the assistance of the Mahomedan Law Officer of his Court.

Previous to the reading of the charges against these prisoners to them, the Sessions Judge received a letter from Mr. Morton, Barrister-at-Law, wishing to know whether he would be permitted by the Court to attend on behalf of the prisoners, and to conduct their case for them. The purport of this note the Sessions Judge communicated to the Government pleader, who informed the Sessions Judge, that he, had been especially instructed by Government to waive all objections to the attendance of any person on behalf of the prisoners who may be delegated by them to manage their case. The Sessions Judge then wrote in reply to Mr. Morton, that no objections existed to his appearing as the prisoners' Counsel, provided he filed a mooktarnama signed by them, authorising him to act on their behalf.

Shortly after the receipt of this note, Mr. Morton entered the Court, accompanied by Messrs. W. D. Shaw and R. Graham, Attornies for the prisoners in this case. During the reading of the indictment to the prisoners, Mr. Morton on behalf of the principal prisoner, stated to the Judge, that the prisoner felt indisposed, and requested to be accommodated

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with a seat. The request was granted, and he had a chair allowed him during the trial of his case.

The Sheristadar of the Sessions Judge's Court, commenced at about 11 o'clock A.M., the Magistrate's commitment in this case, and at about half past one o'clock P.M., he had finished the reading of the charges, which detailed minutely the transactions of the principal prisoner, ever since his release from the Hooghly Jail, after the expiration of the term of his former sentence for a breach of peace committed by him at Bancoora, and more particularly the affairs of his trip to Culna, and his capture there; together with his adherents; as likewise the prisoner's reply to these charges as given by him before the Magistrate, and was proceeding to read the purport of the evidence of the witnesses examined on behalf of the prosecution, before Mr. Samuells, the committing Magistrate together with Mr. Samuells's comments on them, when the Sessions Judge remarked, that all the witnesses would, during the investigation of this case, be again examined, and the Court would thereby be enabled to form its own judgment on their own testimony; therefore he did not perceive the necessity of having them all re-read to the Court now, together with the Magistrate's opinion on them, as the Court would not be guided in its decision of this case by whatever the Magistrate might opine of it; but from its own judgment thereon, and from the facts which may arise during its investigation. In this remark of the Sessions Judge, both the Mahomedan Law Officer of his Court as well as the vakeels for the prosecution and the defence coincided; but the Sheristadar replied, that he differed in opinion from them, and that it was requisite to have the whole of the commitment, together with the abstract of the evidence, and the Magistrate's comments thereon read; because their perusal would prove the trickery and the chicanery of the prisoners. To this reply no objection being made by the Court, the reading of the commitment was continued and ended at about two o'clock.

After this reading was over, the three counts of the charges against the principal prisoner and his adherents, were read to them in the Bengalee language at their request.

The prisoners pleaded not guilty.

The reply of the principal prisoner. My name is Pratap Chandra Dhe Maharaj. I have no profession or calling. I am a native of Burdwan and the rightful zemindar of it. I can read and write. I plead not guilty to the charges against me. I wish an English copy of this my statement to be furnished to my vakeels. This request was complied with. He then signed this plea to the indictment against him; after which the other prisoners were severally brought up and stated their names, age, the names of their parents, their profession and place of nativity, to the Court, and signed their declaration of not guilty to the indictment against them.

Whilst the prisoners were pleading to the indictment against them, a discussion took place between the Court and the vakeels for the defence, regarding the attendance of Dr. Halliday, a very material witness for the defence. He, it appears, was formerly the family Doctor to Maharaja Pratap Chandra. This officer, has stated in reply to his subpœna, that as he cannot be compelled to attend on the subpœna, served upon him in this case, he declined so doing, unless his travelling expenses and the deduction of his allowances, which would necessarily ensue, in consequence of his leaving his station, he paid to him. This reply, it appears, was submitted by the Sessions Judge to Government, who, in reply, informed him, that the Government would not deviate from their usual practice in these cases, and therefore they declined to re-imburse the Doctor for the losses he said he would suffer in consequence of his attendance on the subpœna.

Mr. Shaw replied, that he is not conversant enough to declare what the practice in such cases is in the Mofussil Courts; but in the Supreme Court in

criminal cases, the Court compelled the witnesses within its jurisdiction to attend, and they were not allowed any travelling charges. He supposed the same rule would hold good in this case. He then mentioned a case quoted by Mr. Spankie. The Sessions Judge, on perusing it, opined, that it did not coincide with the case now pending before the Court, and said that if the defence wished the attendance of Dr. Halliday, they could send him his expenses and he would then willingly come.

In consequence of the subpœnas being worded for the 20th instant, none of the witnesses were in attendance to-day. The Court, in consequence thereof, adjourned at 3 o'clock, P.M., until 10 o'clock, A.M., of the next day.

The prisoners were this morning brought up at 8 o'clock A.M. into the Court house, and the Court sat at a quarter after 10 o'clock A.M.

There are 67 witnesses subpœnaed for the prosecution, and 347 for the defence. The trial, it is supposed, will occupy the Court two months if not more.

Mr. Graham informed the Court on its adjourning, that the prisoner, Radakristo Ghosaul, had been released by the Magistrate on bail of Rs. 300, but the Magistrate subsequently added Rs. 200 more to it; and although the bail is competent for a much larger amount, and is forthcoming, still the prisoner is taken back to the jail and confined.

Mr. Bignell remarked, that no prisoner could be released on bail during the hearing of his case before the Sessions.

With regard to the attendance of Dr. Halliday, the Judge advised the defendant's counsel to apply to the Nizamut Adawlut.

Gregory Herkelots deposed, that he had seen Pertab Chunder, the late Raja of Burdwan, three times before his demise. The first time he saw him, was for a few minutes, when he was introduced to him, in 1816, by Mr. Forbes, the Commissioner for foreign settlements, under whom deponent was then an assistant. The next time when deponent saw him, was in September 1817, on the occasion of the settlement of Chinsurah being restored to the Dutch. On that occasion Pertab Chunder requested deponent to introduce him to Mr. Van Bruclar, the Dutch Commissioner. Deponent consequently accompanied Pertab Chunder in his carriage, from the Rajhbarry at Chinsurah to the residence of Mr. Overbeck, the then Governor of Chinsurah, and after an interview of about one hour, Pertab Chund returned in company with deponent to the Rajhbarry. The last time was a few days after this introduction, when deponent was in his company for a few hours at a nautch where he had been invited.

It would be very difficult for deponent to recollect and identify natives after a lapse of 20 or 22 years; but from what deponent has seen of the prisoner, who alleges himself to be Rajah Pertab Chund, he does not consider him to be the person he personates. He appears to be about an inch taller than Pertab Chunder was, and not so fair. Besides, his features do not coincide with those of Rajah Pertab Chunder. Deponent has seen the picture of Rajah Pertab Chunder produced during the trial, it resembles the late Rajah. Deponent first saw the prisoner in the Hooghly jail, in 1836, where he questioned him regarding the situation of the Rajhbarry and the particulars of his interview with the Dutch Commissioners. His answers to these questions were not correct. He stated the tank and garden in the Rajhbarry to be to the north of the building, whereas they are to the southward. Deponent even chalked out a plan of the building, but he still could not describe it, although it was the residence of Pertab Chunder when he was at Chinsurah.

On cross-examination deponent stated, that Europeans in this country grow darker, but he cannot say if natives change their complexion during twenty-two years; but perhaps the constant use of oil may darken their complexion. Deponent has seen the prisoner three times since his interview with him in

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the jail. When deponent first saw him, he was much fairer than he now is, and stouter. When deponent saw him under examination in the Magistrate's Court here, he then appeared to be much darker and rather haggard; he is now rather fairer and improved in his appearance. When I saw the prisoner in the Hooghly jail, he recognized me and mentioned my name. He never evinced any disposition to converse with deponent on any occasion. The particulars of the interview between Rajah Pertab Chunder and the Dutch Commissioners were of so important a nature, that if the prisoner was Rajah Pertab Chunder, he could never have forgotten them. The circumstance of the prisoner's not recollecting it, nor being able to describe the particulars of the Rajhbarry, even putting aside the circumstance of his features, complexion and stature not corresponding with Pertab Chunder's, I could almost swear that the prisoner who alleges himself to be Rajah Pertab Chunder, is not the man he personates. Mr. Overbeck received two or three visits from Pertab Chunder after Mr. O. had been appointed Governor of Chinsurah. Deponent cannot say whether Mr. Overbeck was intimate with him or not.

The rest of this deponent's evidence being irrelevent to the question at issue is omitted.

After this, Rajah Noro Hurry Chund Roy, of Hurdhun, Zilla Nuddea, who was large on bail, appeared on his reconnaissance and pleaded not guilty, and the deposition of this witness and Mr. Hutchinson's evidence, as given at the Magistrate's Court, were read over and explained to the prisoner, and the Mahomedan Law Officer of this Court.

Henry Toby Prinsep deposed, that he had been personally acquainted with the late Pertab Chunder, son of Rajah Tej Chunder, late Zemindar of Burdwan. He was personally acquainted with him for some time previous to his being appointed a Special Commissioner at Burdwan in 1839, where he had several interviews on business connected with that Zemindary with both Rajah Tej Chunder and Pertab Chunder. I took great interest in these interviews, and the old Rajah carefully excluded all his amlas on those occasions and none but deponent, the Hon'ble Mr. J. E. Elliot, and the two Rajahs, were admitted in them. They were of such a nature that neither Pertab Chunder nor any of those present on the occasion could have forgotten them; and when deponent questioned the prisoner last year on that subject, he gave very incorrect replies. He said that all the amlas were present on those occasions, and that he knew nothing of Mr. Elliot. Deponent had an interview with the prisoner last year, and spoke to him on that occasion. The prisoner mistook Mr. Pattle for deponent, and he could not recognise Mr. Hutchinson, who was present in the room, but he subsequently recognized Mr. Trower. The late Pertab Chunder was rather a short man, shorter than Dwarkanath Tagore, with rounded limbs, small boned and neat make. Deponent, if he were to see him, could recognize him again. He does not believe the prisoner to be Rajah Pertab Chunder, as he does not resemble that person. I have seen a picture of Rajah Pertab Chunder in the Court; it was reckoned a tolerable likeness of that individual when it was first drawn, but it did not resemble him latterly.

In 1820, Government received an official intimation of the death of Kowur Pertab Chunder and wrote an official reply of condolence to his father Rajah Tej Chunder. Deponent was then Secretary to Government in the Persian Department. Deponent drafted the letters and Lord Hastings signed one and deponent the other. When the death of any great personage is reported to Government, no enquiries are made unless there are any reason to doubt the correctness. There were none in this case and consequently no enquiries were made. This is all the knowledge deponent has of Pertab Chunder's death. General Allard, after his return from France, told me that he had seen the prisoner pre-

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vious to his quitting India, travelling about Lahore as a fukeer, and he gave himself out to be a Bengal Rajah; but of what place he did not state then, and General Allord said, that he believed him to be a real Rajah, but I was always incredulous of his tale.

Here this deponent recognized the official letters of condolence alleged to be written by him.

Dwarkanath Tagore deposed, that he had seen the Raja Pratap Chandra, son of Raja Tej Chandra, zemindar of Burdwan, 5 or 6 years previous to his death, and was very intimate with him in Calcutta. The last time deponent saw him, was about one year previous to his death, which occurred 18 or 20 years ago. Deponent never was at Burdwan. Deponent cannot, after the lapse of so many years, state whether the prisoner who alledges himself to be Pratap Chandra is that individual or not; but he thinks he is not, because he is tall and and darker than Pratap Chandra was, and his features are not like those of Pratap Chandra. Pratap Chandra was very fair for a Hindoo. Deponent was once asked to take up the prisoners case. He engaged and gave Mr. Turton some written questions to ask the prisoner, which, if he were the real Pratap Chandra, he could never have forgotten. As the prisoner could not answer these questions, he at once disbelieved him to be the man he pretended he was, and abandoned his cause. Raja Gopee Mohun Deb, who was very intimately acquainted with Pratap Chandra and his father, invariably refused to see the prisoner, being fully satisfied that he was an impostor and that the real Pratap Chandra was dead. Mr. Turton subsequently treated with Mr. Charles Reed for the management of this prisoner's case, and he was to have got Rs. 100,000 for his trouble, partly in advance; but as there was no money forthcoming, he threw it up. The prisoner, when deponent first saw him recognized deponent in the Supreme Court, although deponent, did not recognize him to be Raja Pratap Chandra. In fact, deponent is certain that the prisoner is not Pratap Chandra from all the circumstances of his case. Deponent knew Kissen Seal. He was after Pratap Chandra's death for some time in deponent's employ, and was discharged for embezzlement. He was a great favorite of Pratap Chandras. He might have made away with his papers after his death, but deponent is not aware of this. The picture which deponent saw in this Court, of the late Pratap Chandra, bears a strong resemblance to him. The firm of Carr, Tagore and Co. are the mooktars of Ranee Bassunt Coomaree and have paid some money on her account to Mr. Hedger, her attorney. Her suit is for maintenance and some property, which Raja Tej Chunder assigned to her. Deponent does not think that if the real Pratap Chandra were to appear her case would suffer by it, as it is no way connected with the question of the Rajaship. However, the firm of Carr, Tagore and Co. have in consequence of some information, which has subsequently come to their knowledge, intimated to her attorney, that they will no longer act on her behalf. In expressing his opinion as to whether the Ranee's case would be affected by the issue of this case, deponent said, he would submit it to the better judgment of Mr. Morton who was a barrister and better able to decide the point.

Mr. Morton applied to the Judge to enquire, whether, according to the course of mofussil practice, any course could be adopted by consent of both sides, for taking the depositions, as transmitted from the Magistrate's Court, as evidence in the Judge's Court, without re-examining the witnesses. He was ready on his part to allow certain of those depositions (if practicable) to be received in evidence here, and the mere reading of them in Court would take far less time than examining the witnesses over again. He had mentioned the matter to Mr. Bignell, who had acquiesced in the expediency of the course, if it could be done.

Mr. Curtis said that it was not the

usual practice certainly, but he would consider of it.

Radha Mohun Sircar deposed, I saw the prisoner, who alledges himself to be Pratap Chandra, in custody at Bancoorah. I went there as a witness in that case, in the B.S. 1227 either on the 6th or the 8th Pous, Raja Pratap Chandra fell ill, and on the night of the 10th or 11th of that month at 11 o'clock P.M. he was carried to Ambica. I was then mooktear of Ranee Joy Koomaree, wife of Tej Chunder Bahadur. On the night of 20th of that month, Joy Koomaree sent for me, and her brother Sham Chunder, and desired us to take a letter to Pratap Chandra who she said was seriously indisposed at Ambika, and added if you find him somewhat recovered, then do one of you stay at Ambika and send us daily intelligence of his health, and the other return to me at Burdwan. We left Burdwan that night and arrived in the evening of the 21st Pous at Ambika, and gave the letter to Maharaja Tej Chunder, who was then at Ambika, and asked him how Pratap Chandra was. He replied go and see him, he is in an adjoining room, and struck his forehead. Sham Chand and I went there and we saw Pratap Chandra very dangerously ill and a person fanning him. We afterwards returned to our resting place. On that night, shortly before midnight, we heard a noise in the Rajbary, and a shout that the Raja was going to the river side. We came out and saw Pratap Chandra carried to the Ghaut of the river in a palkee, and many persons following him weeping. When I arrived at the Ghaut, I saw the Raja in a swoon, lying on a bed at the Ghaut. After a short time, the Raja, in consequence of the cold river breeze, began to shever, the people then took him from the river side into a tent close by, where Bermanund Gossain began to read prayers over him, and bestow alms of elephants horses, cows, grain and clothes; after which Bermanund Gossain and Juggut Doctor said, there are no hopes now, take the Raja to the river side and perform his funeral obsequiese there. The Raja was then retaken to the river side. Sham, Nundo, Gocul, Bussunt and Jugmohun Baboo took him there, and put the bed partially into the river, so that the water reached the Raja's knees. Jugmohun and Mohun Baboo held his knees, and Bermanund Gossain and the other khattrees, began to exclaim hurry bole, hurry dhonee around him. About half an hour or less after, the Raja expired. As he was expiring the crowd pulled up the bed and left the corpse on the bank, and Jugmohun and Mohun Baboo stood near the body, we and the populace at a short distance. Bussunt Lall and Ghassee Ram, went to give notice to Tej Chunder of Pratap Chandra's death, and they shortly afterwards returned. A panoply, ruttee and other articles necessary to perform the funeral rites, were brought to the Ghaut. They then undressed the deceased, washed him, put an unbleached shroud over his corpse, and Ghasee Ram made a funeral offering called pindee. The corpse then was removed on the ruttee a short distance on men's shoulders, near the funeral pile, where another pindee was offered, they again bathed the corpse, took it up from the ruttee or coffin, and put it on the cheeta or funeral pile, and Ghasee Ram performed a third pindee on the cheeta, on the mouth of the Raja. Ghasee Ram then thrice performed a circle round the funeral pile, with a burning brand in his hand, at each circuit touching the pile with the brand and on the fourth round Ghasee Ram set fire to the deceased's mouth, and the crowd immediately afterwards began to throw ghee, spice and tow on the pile. This was about 2 o'clock A.M. Early next morning, they removed the ashes, and Ghasee Ram threw some river water on the pile and quenched it. Jugmohun washed the sute off the pile and scraped the ashes and gathered the bones and ashes and put them into a new earthen pot, and took it to put it into the burying ground of Ranee Bissunt Kumaree, the mother of Pratap chandra; after his departure I bathed, took my meals, and returned to Burdwan, I did not see

Prawn Baboo on the occasion, Raja Tej Chunder accompanied Pratap Chandra to Ambica, I am sure that Pratap Chandra is dead, for I saw his corpse burnt.

Bissunth Lall Baboo, deposed. I was acquainted with Raja Pertab Chunder of Burdwan. He is dead. On the night of the 13th Pous, I received a letter at Calcutta, that Pertab Chunder was very unwell, and I proceeded to Ambica and arrived there on the evening of the next day, and saw Pertab Chunder lying on his bed very sick, attended by Bermanund Gossain and Uskur Allee Hakeem. I saw the Raja was laid up with intermitting fever, which came on him every morning at 10 o'clock. It used to be preceded by cold shivering and fainting fits, and the fever used to abate towards the night, leaving the patient weak from prostration of strength. On the 21st of Pous, Bermanund and Jugmohun said, we despair of the recovery of the patient, do with him what is the usual custom with you in these cases. Intimation of this was conveyed in the evening to Rajah Tej Chunder, who, on hearing it, began to weep and replied, "Well, do whatever is necessary in such cases." After this they brought Pertab Chunder down from his bed room, and as the staircase was circuitous, they could not bring the bed down, therefore Bermanund and Jugmohun took him up in his bedding and brought him down, many others following them. After this they sent for a palkee and put Pertap in it, and took him slowly to the river side. On arriving at the ghaut, they took him out of the palkee and put him on charpoy when he began to shiver from the effects of the cold breeze and was cosequently removed on the cot to a tent close by. Bermanund read the Bagbut Pooran to him at 9 P.M. Bermanund said, he is dying take him to the river side and perform his funeral obsequies. I was one of those who assisted in taking him on this occasion to the river, and placed him on the bank with his body partly in the water, and Bermanund Gossai, I and other, began to pour water into his mouth and read prayers over him. Whilst so doing he died about 1 o'clock A.M. Mohun Baboo held his feet, and Jugmohun his shoulders. I after Pertab's demise, went to the Rajbarry at Ambica and told Tej Chunder that Pertab had died, and asked him who were to perform the ceremonies of the deceased. Tej Chunder ordered Ghasseram to light the funeral pile. I returned with Ghasseram to the river side, and desired Shebooram and Ram Kissen, to bring some sandal wood, bamboos, ropes, &c., perform the rites, and to gather the Kethrees of that place to assist in these rites. Here this deponent described the particulars of all the minute ceremonies which were performed on the burning of the corpse, which, as they have already been fully detailed by the witness Radamohun Sircar, it would be both uninteresting and superflous to retail them, more so as there was no glaring contradiction between the two testimonies on this subject, so as to throw any discredit on them from that circumstance. After describing with great prolexity these funeral obsequies, deponent added, I have seen the prisoner who alledges himself to be Rajah Pertab Chunder of Burdwan, twice here in the Magistrate's Court of Bancoora, and once in the presence of the Magistrate of this Court. Prisoner does not resemble the deceased Rajah either in shape, features, color or stature, nor even in age. Prisoner is younger, taller and darker than Pertab Chunder was. Pertab was born in the month of Kartick, 1197 B.S. and my father died the following day, therefore I remember the date. Partap Chunder died in Pous 1227 B.S., therefore he was 30 years old at the time of his death. Prisoner does not appear to be older than 40 years.

Cross-examined by Mr. Bignell.—There were many torches burning at the time Pertab died and was burnt. I saw his features on the pile and assisted in the funeral rites. The pile was about two feet high and at a short distance from the river. On its banks corpse was consumed in my presence. There was no possi-

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bility nor motive of or for the deceased to escape.

Cross-questioned by Mr. Morton.—I have been employed by Ranee Komul Komaree, the sister of Prawn Baboo, to whom she is related. My grand daughter is married to Prawn Baboo's son Tarrachand, and my son was married to a daughter of Prawn Baboo, who is dead, leaving issue.

Nundoo Loll, deposed. I am related to Prawn Baboo. My cousin is married to one of his daughters. I saw the prisoner, who alledges himself to be Pertab Chunder, at Bancoora, where I was subpœned as a witness, but not examined. On the 5th Pous 1227 B.S. Rajah Pertab Chunder, son of Rajah Tej Chunder, zemindar of Burdwan, fell sick. When his indisposition increased, Dr. Cantur, the medical assistant at Burdwan, was called to see him. He came and was with the patient about 20 minutes. He advised the invalid to be able and have leeches applied to his temple. This prescription he refused to have administered, and was consequently dispatched that very night to Ambeeka, because the doctor refused to prescribe for him, unless he consented to abide by them. Tej Chunder followed him, and two native physicians, and many residents of Burdwan accompanied him to Ambeeka, where we all arrived on the evening of the 14th Pous B.S. On that very evening the fever came on him with shivering fits, and he fainted away. After this, this deponent deposed to the different stages of the indisposition of Pertab Chunder, up to the period of his demise, as likewise all the details of the funeral ceremonies, almost word for word as the two former witnesses had related them, and he swore positively that Pertab Chunder had expired in his presence, and he had seen his corpse burnt at Culna. In conclusion, this witness likewise deposed, that the prisoner, who alledges himself to be the deceased Pertab Chunder, does in no wise resemble him, neither in age, shape, stature, color features, in fact his *toute ensemble* was quite different from that of the deceased Rajah.

Cross-examined by Mr. Bignell.—I saw the dead body of Pertab Chunder burnt.

Cross-examined by Mr. Morton.—You are an European. I cannot tell the age of any European, but by guess. I did say before the Magistrate, that I should conceive you to be 35 years old. I am a servant of the present Rajah of Burdwan, and get 21 *Rs.* a month and 10 Rs. for conveyance. I am an old servant of that Rajahship. By two or three intermarriages, I and my uncle Bussunth Lall, are related to the family of Prawn Baboo.

Munnee Lall, deposed. Within these 2 years I got a pension and am the dewan of Kissenpoor, under Prawn Baboo. I know Khosaul Baboo. I cannot see at a distance; but what is the use of my seeing a man who pretends to be another person whom I saw expire, and whose corpse was burnt in my presence. The prisoner who pretends to be Rajah Pertab Chunder, I have seen in the Magistrate's Court here. My memory is not very tenacious, but I can on consideration recall many facts which may have been obliterated from it. After this, witness likewise, but with more brevity, described the last sickness and death and the funeral ceremonies of the late Rajah Pertab Chunder, the son of Tej Chunder, the late zemindar of Burdwan, and added, that the person who pretends to represent him, does not resemble him in any wise whatsoever. I am 58 years old, and Sham Chund is my father-in-law. He is 3 years younger than me.

Cross-examined by Mr. Morton.—I live in the Rajbarry at Chinsurah, and did so when I attended on the Magistrate's subpœna. I never had any consultation with any person on the subject of my evidence to day. I would not tell a lie for 50,000 rupees. My memory is far better than my eye-sight. I never can forget the death of a great man my master, and I was a witness in the case of Pertab Chunder's widow against his father. No inquiries are made at the death of any man, for no dead man has ever risen from the dead, and this is all.

a folly and unless trouble in this man to pretend to be Pertab Chunder, and gave needless trouble to the Court, the witnesses, and to you, Moulvy and Judge. No one ever doubted Pertab Chunder's death at either Culna or Burdwan, and the Government is the first to lend an ear to this man's absurd pretentions. No memorandum was taken of the date of Pertab's death, but it is a subject of daily conversation at Burdwan. Then addressing Mr. Morton: Are you the defendant's vakeel? Question away as long as you please, you will get nothing out from me. After this speech of this witness, Mr. Morton declined questioning him any further.

Mohun Lall then deposed, that he likewise had been acquainted with the late Rajah Pertab Chunder, Zemindar of Burdwan, and was present at his last illness and demise at Culna, in B.S. 1227, in the month of Pous; and that Pertab Chunder died in his presence, and deponent had seen his corpse burnt at Culna on the morning of the 14th Pous, 1227 B.S., and that the prisoner who pretends to be Pertab Chunder, the late Rajah and Zemindar of Burdwan is not him, as the Rajah died many years ago and was burnt, and neither does he resemble the Rajah either in shape, features, color, height nor age. This witness admitted, that he was the Superintendent of the present Rajah of Burdwan's elephants, and got 10 Rs. a month for his services. He was cross-examined for a minor points.

Bhyrub Baboo deposed, that he is married to Prawn Baboo's sister, and Prawn Baboo has married deponent's sister. Deponent is in the service of the present Rajah of Burdwan. This witness likewise followed in the wake of the last witness, regarding the death and burning of the late Rajah Pertab Chunder at Culna in his presence and the non-resemblance of the principal prisoner to that individual.

Sham Churn Baboo deposed, that he is the brother of Ranny Jye Koomarree, the elder widow of the late Maharaja Tej Chunder, and he gets 10 Rs. a month from the present Rajah, as a Darogah to his establishment at Burdwan. Deponent's daughter is married to Baboo Rasbaharry, Prawn Baboo's third son. This witness likewise followed in the wake of the former witnesses and deposed to his having been present at the death and burning of Raja Pertab Chunder, and that the prisoner alledging himself to be that person, is not him. Deponent was present at the death of and witnessed the funeral obsequies of the late Rajah Tej Chunder, and althuogh he could not, either in his examination before the Magistrate at Bancoorah, nor at the time he gave his evidence before the Magistrate of this district, relate the particulars of the ceremonies attendant on his funeral, he is well prepared to state them now if the defendant's counsel required of him.

Rada Churn likewise deposed to the same effect as the last witness, *viz.*, that he was present at the death and burning of Raja Pertab Chunder, and that the prisoner assuming his name does not resemble him. The deponent was likewise related to Prawn Baboo, and a servant of the present Raja of Burdwan.

Up to the period when deponent was examined, all the Hindoo witnesses were, instead of being sworn either by the Ganges water, the solemn declaration, either by self repetition or holding the same written on paper in their hands, were made simply to sign a written ekrarnama, or compact, to speak the truth in their evidence in this case. To this form the prisoners objected, and wished the court to swear them on the Ganges water. Mr. Curtis remarked to them, that these witnesses would be equally liable to the pains and penalties for perjury by law, if they swore falsely after they had signed this compact' as if they had sworn on their solemn affirmation to speak the truth. The prisoners replied, that the simple compact, as it was not any religious form, these witnesses, would not consider it hardly on their conscience perhaps and therefore they may sever from the truth. Here

Mansaram, the Sheristadar of the Court, said, that it was binding both on them conscientiously and legally; but the prisoners not being satisfied with the Sheristadar's opinion on this matter, Ram Koomar, the next witness for the prosecution, was sworn on his solemn affirmation. He objected to this, and wanted to sign the compact; but the judge overruled his objection. He deposed that he was the family priest and tutor of the late Raja Pertab Chunder, and likewise to the death and burning of the Raja, and that the principal prisoner in this case did not resemble that person. He likewise added, Radakissen Bysack one day invited me to his house and there I saw the prisoner. Prisoner asked me whether I knew him? I replied no. I then asked the prisoner whether he knew me. The prisoner made some mumbling reply, which I did not distinctly hear. I then asked prisoner, if you are Pertab Chunder, relate to me the particulars of the affairs of the Rajbary, and what situation I held in the Rajbary at Burdwan. To this question the prisoner made no reply, but smiled contemptuously on me. I then informed him, that I was the Gooroo, *viz.* priest, and tutor to the Raja Pertab Chunder, who was dead and burnt; and if he were that person he certainly would have recognized me. I then asked him, can you tell the particular mark on my body by which I was known to Pertab Chunder. The prisoner made a reply, which I did not distinctly understand. I then began to relate to the prisoner, at the request of Chund Mookerjee, the particulars of the illness and death of the late Raja Pertab Chunder at Culna, and his corpse being burnt there, and described to him all the funeral ceremonies which were performed on that occasion; and then asked him how could these facts be consistent with his assertion of his being that Raja. The prisoner, instead of making a reply, laughed at my question, and dismissed me, and desired me to call again the next day. I then took my leave and did not repeat my visit to the prisoner as he had requested me to do.

Hurrischunder Roy deposed the same as the last, *viz.* that he witnessed the death of Pertab Chunder and saw his body burnt at Culna, and that he is related to Prawn Baboo's family, and receives wages from the Rajbarry.

Radhakishen Bysak Dewan of the Treasury, deposed, I never went to Burdwan and I never had seen Pratap Chandra before I saw the person who represents him now, I recoguize the principal prisoner in this case, and I know him to be Pratap Chandra. I have been acquainted with him for the last 2 years. I first aaw him in the jail at Hooghly, when Raja Buddinath was present with me. I went to see him at the prisoner's request, written to me in a Bengalee letter, bearing a Persian signature. He requested me to get some person to become his security for the peace, after the expiration of the period, of his imprisonment. The signature of the letter was Raja Pratap Chandra.

Before I saw the prisoner at the Hooghly Jail, he was a perfect stranger to me. I got Rojkissen Chowdry and Goopeekissen to become his security, and their security was filed in this Court for one year. Pratap Chandra, after his release from the Hooghly Jail, came to my house and resided six months with me. After this period, I hired a house for the prisoner near the Town Guard, on the Chitpore Road. The house was a three storied house, about half a cross distant from my residence in Calcutta. He did on one occasion, borrow from me, on a bond, 16,000 rupees. He signed his name to the bond Raja Pratap Chandra. The money had been advanced to him in small sums at various times before hand, and the bond was given on the 10th of March 1838, on a settlement of these accounts. The bond was drawn out in the Office of Mr. R. Graham Attorney at Law, and he was an attesting witness to it. Besides this, I have other unsettled accounts with him, but I have no other document signed by him. Maha Raja Pratap Chandra Dhe Raj, execut-

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ing another bond for 13,000 rupees, executed by him on the 30th August 1838, and drawn out in Mr. Graham's Office and attested by Mr. Graham. This bond was executed in the jail at Hooghly when I deposed before the Magistrate. I said the debt from Pratap Chandra to me was 35,000 rupees; but I now find that the whole amount is 4,000 rupees more. Ramanund Mitter Kantee Charan Buttacharjea Tillock Chund Mitter and Raja Goopee Mohon Deb, (after he had made enquiries through his khansamah to ascertain whether the prisoner was Raja Pratap Chandra or not) Buggobati Churn Mitter and other respectable persons, told me that they had seen and made inquiries respecting this prisoner and were satisfied that he was the true Raja Pratap Chandra. All these persons are alive and living in Calcutta, with the exception of Raja Goopee Mohun Deb; and his khansama, whose name I do not know, is no doubt still living in Raja Rada Kanth Deb's service. General Allord took Gungapersad Ghose to see the prisoner at the Hooghly Jail, and Gangapersad Ghose, on General Allord's asserting that the prisoner was Raja Pratap Chandra, advanced him some money. I do not know Ram Koomar. I never invited him to my house through Chand Mohorer; for I have no Mohorer under me in that name, either at the Treasury or in private service. I took the bonds from Pratap Chandra in the name of my son or relatives, and if he does not pay me I will not sue him for this amount.

Cross-examined by Mr. Bignell.

Dr. Haliday saw Pratap Chandra at my house; and he said afterwards to Mr. Trower, that he felt perfectly satisfied that he was Pratap Chandra, the Raja of Burdwan. Gopee Mohon Deb never, to my knowledge, visited the Raja in my house; whether he saw him elsewhere I do not know. Raja Goopee Mohun sent two servants to make enquiries regarding the Raja, and by the result of their investigation into the matter, he assured me that he felt convinced that the prisoner was the real Raja Pratap Chander; and had it not been for the assurances of these respectable persons, I would never have received him into my house or advanced him the money which I have done. I believe Dr. Jackson did lend Pratap Chandra some money. Raja Goopee Mohen Deb distinctly told me, after the report of his two servants to him, that the prisoner was Raja Pertap Chandra and he had no doubt on the subject.

Re-examined by Mr. Morton.—From the report of other individuals and the prisoner's own statement, I feel convinced that he is Raja Pertab Chunder. I have lent all the money to him in notes. I am not aware that Pertab Chunder has ever deceived me, nor have I any cause of complaint against him. I have lent money to civilians even, of which I have as little prospect of repayment as of this sum.

Goopee Nath Dutt, deposed to the death and burning of the late Rajah Pertab Chunder, Zemindar of Burdwan, at Culna, on the 21st Pous 1227, B.S., he being present on the occasion, and having witnessed the funeral ceremonies of that person and saw his corpse burnt ou the funeral pile. He likewise further deposed, that the prisoner in this Court, who pretends to personate that individual, does not resemble him either in shape, height, features, or complexion. Deponent is the paymaster of the Rajbarry establishment at Burdwan.

Pearymohun deposed, that he, likewise, was present at the demise of the late Raja Pertab Chunder, son of Raja Tej Chunder, Zemindar of Burdwan, and saw his corpse burnt at Culna on the Pous 1227, B.S. The prisoner who represents Pertab Chunder, is *shorter* than Pertab Chunder was and does not resemble him in any wise. Deponent has been for 10 or 11 years in the service of Raja of Burdwan, and gets 90 rupees a month. The Raja Tej Chunder, first married Ranny Komul Koomarree, the sister of Prawn Beboo, and subsequently Rannee Bussunth Koomarree, the daughter of Prawn Baboo. The leases granted to the under tenants

now run thus. "In the name of Raja Matab Chunder, by his guardian Ranny Komul Koomarree."

Anoop Sing, Jemadar of the present Raja of Burdwan, Matab Chunder, was examined on oath. This witnesse's testimony tended like those of the preceding witnesses, to prove the death of Pertab Chunder and the burning of his corpse at Culna on the 22nd Pous 1227 B. S. He added, that he was, during the life time of Raja Pertab Chunder, his Naib Jemadar, and constantly attended on his person. He never heard of Pertab Chunder having been indisposed until the illness of Pous 1227 B.S. of which disorder he died. Defendant never saw the prisoner who personates Raja Pertab Chunder in any of the Rajbarries; if the prisoner had gone into any of them on any occasion, deponent must have seen him. Deponent never saw any Christian gentlemen visit Raja Pertab Chunder on any occasion. The prisoner who alledges himself to be Raja Pertab Chunder, does not in any wise resemble him.

Kally Doss, Pundit of Burdwan, deposed. When deponent first saw the prisoner who personates Raja Pertab Chunder, the late Zemindar of Burdwan he had a large black beard, and was seated on a tonjohn, followed by Hafiz Mollah and some others, and a large concourse of spectators; and the darogah of Culna, and many Police peons, were keeping an eye on the spectacle, with an intention of preventing a breach of the peace. The deponent likewise was present at the decease of the late Raja Pertab Chunder on the night of the 21st Pous 1227 B.S. At Culna he saw the Raja's corpse on the ground, but he did not see it on the funeral pile. Deponent is not a servant of the Rajbarry. This witness said, that after the lapse of so many years it would be very difficult to state whether the person who now assumes his name and title resembles the real Pertab Chunder or not; but as far as his memory will enable him to recall the deceased Raja's features, he does not think the prisoner either so fair or handsome a man as Pertab Chander was. Pertab Chunder was the exact resemblance of the Hindoo God Kartick, and was stouter than the prisoner. Deponent did not see Pertab Chunder die, but saw his corpse after his demise. The statement being at variance with his testimony on the subject at the Hooghly Magistrate's Court, on being cross-questioned on this point, he replied, that when he arrived on the spot where the Raja's body lay, he stood about three or four cubits distance from it. There were many persons present, some holding the Raja's body, some repeating prayers, some shouting, some crying, in the confusion occasioned, by which this deponent cannot say whether the Raja was dead or not; but if he was not then dead, he must have expired shortly afterwards. As deponent is a Bengally Brahmin and deceased was an Upcountry Khetree, deponent could not assist in the funeral obsequies of the deceased; therefore he did not see the body consumed on the pile, but retired to the house of Ram Lochun, at a short distance from whence he saw the smoke of the pile ascend the air. About three months after, the deponent heard the rabble population of Culna bruit about the place, that Raja Pertab Chunder was not dead. Deponent might deposed before the Hooghly Magistrate that he heard the rumour on that very day; but he is not certain when he first heard it; but it was certainly shortly after the demise of Pertab Chunder; but none of the respectable people of Culna believed this rumour. Deponent's nephew, Tarranychund, who is a witness for the prosecution, is very dangerously ill, and is not expected to survive the fever by which he is confined to his bed. He has already been once taken to the river side, but his disorder having taken a favorable turn, he was reconveyed from the river side to his house, where he still lies sick in a very precarious state.

Bissonath, Mohurer of the Tax Department of the Magistrate's Court, deposed, that he first saw the prisoner seated on

Mr. Shaw's left hand *i.e. soi disant* Maha Raja Pertab Chunder Dhe. Raj, Zemindar of Burdwan at Ambeeka, where he was parading about the streets with a large retinue, seated on a tonjohn. Deponent had gone to Ambeeka in consequence of his having sent in 5 months previously his resignation. He went there by perwanna to settle his account. It was at 6 P.M. that deponent saw the prisoner parading the streets as above described. Deponent accompanied Moobarukullee, late darogah of Culna, to the Rajbarry, and there saw the late Raja Tej Chunder as he was smoking, and asked him how Raja Pertab Chunder was? Raja Tej Chunder replied, go and see; he is in the next room. Deponent saw him there and he was very sick. Deponent then took his leave for that day, and on the following day Lochun Hakeem attended on the invalid, and informed deponent that there was no hope of his recovery. The remainder of this person's deposition tended to prove the death and burning of the late Raja Pertab Chunder, and that the prisoner, who asserts himself to be that individual, has no resemblance to him whatsoever, and is not him. Amongst other descriptions he said, Pertab Chunder's two front teeth projected very much whenever he conversed with any person. Deponent was not present when the Raja Pertab Chunder died; but saw his corpse lying on the bedding, partly in the water and partly on the dry bank. Deponent never stated in the Hooghly Magistrate's Court, that he, Pertab Chunder, had expired in his presence. This witness's deposition closes the evidence, with the exception of one witness, for the prosecution, regarding the death of the late Raja Pertab Chunder, son of Raja Tej Chunder, the late Zemindar of Zilla Burdwan, the rest on that subject being documentary.

The further hearing of the case was then postponed until Monday next, the 26th instant at 10 o'clock. Every Saturday the proceedings of this case will be stayed in the Court, and the Judge will, instead of investigating it on those days, take up the usual current duties of the civil and criminal department in his Court.

At the close of this day's proceedings Mr. Morton observed to the Judge, that although Government had declined to pay the expenses of Dr. Halliday, a material witness for the defence, he trusted that if the prisoner deposited the expenses of that gentleman's dawk journey to Calcutta, and back again to his station, Government would not object to make such arrangements as could prevent his sustaining any loss in consequence of his absence from the division of which he is the Superintending Surgeon.

Mr. Overbeck (who had been examined before the Magistrate) being in Court as a spectator this morning, Mr. Morton asked Mr. Bignell, if he did not intend to call him as a witness, and, upon being answered in the negative, directed the attention of the Court to the circumstance, observing, that it would be but fair that this gentleman's testimony should be taken.

Mr. Bignell replied, that not conceiving Mr. Overbeck's evidence would be of any service to his case, he had not called him, and did not intend to do so, but that Mr. Morton might call him for the defence, if he wished to have his testimony.

Mr. Morton said, that he of course did not expect Mr. Bignell, as Counsel for the prosecution, to call witnesses unfavorable to his own case, but he submitted that the judge had an option to examine any one whose evidence had been taken by the Magistrate, whether that evidence were favorable to the accused or otherwise.

Mr. Curtis saw no reason for his examining Mr. Overbeck. That gentleman had stated on a former occasion, that his memory was now very imperfect, and that he could not speak with any certainty upon the question of the prisoner's identity. If Mr. Morton thought the evidence important, he might call Mr. Overbeck for the defence.

Mohebollah, darogah of Culna, deposed.—I was appointed darogah of the Culna thanah eight or nine months ago, either in the month of Maugh or Falgoon last. This is the Rajah (pointing out the prisoner.) This is Ghosal, the mooktar of the Rajah. The next is Hopezoollah, the darogah of the Rajah. The fourth is a native of Culna whose name I don't know. (This was Sugar Dutto.) The others I might have seen, but I do not recognize them.

At this part of the case it appeared, that Rajah Norohury Chand Roy, of Hurdhun, was absent, and he reported himself upon his arrival to be indisposed. He was consequently dispatched to the Civil Surgeon of the station to be examined, and reported as to whether he was too ill to attend at the trial. The examination of the darogah was therefore postponed.

James Erskine, deposed.—I have resided at Soona Mooky, in west Burdwan, since the year 1819. I have been in the habit of going to Burdwan frequently. I was superintendent of embankments there, at the latter end of 1820, I was then ordered to reside there. I saw the late Raja Pertab Chunder there once at the residence of the Hon'ble Mr. J. E. Elliot, but it is so long ago that I have no clear recollection of him. It was before I had the charge of the bunds. The late Raja had gone there merely on a visit of ceremonies. I was then residing with Mr. Elliot.

Examined by Mr. Bignell.—At the time I had charge of the bunds, I was intimately acquainted with the late Doctor John Coulter, then Civil Surgeon at Burdwan, and I always resided at his house, whilst I was at Burdwan. Dr. Coulter died in May 1835, I think. In the end of the year 1820, I recollect, Dr. Coulter was called to attend Raja Pertab Chunder; it was immediately after I took charge of the embankments. Dr. Coulter told me the invalid had a severe fever on him, and was slightly delirious, and that the young man strongly wished to be bled, and often cried "bleed me, bleed me," do not mind what the people about me say. Dr. Coulter said, he would have bled him, but the people about the Raja were much averse to it, particularly his father. Natives are generally prejudiced against that operation. Dr. Coulter never repeated his visit to the sick Raja. When Dr. Coulter left the young Raja, he said he would go home and prepare some medicines for him, and whilst he was preparing them, the calvacade with the Raja passed the house on its way to Culna. It was in the evening, and I saw the lights on their torches. Since my arrival at Burdwan, I have been in the habit of constant intercourse with the Natives of Burdwan, and I never either at the beginning of 1821, or at any time, until the prisoner's appearance in 1835 in Bancoorah, heard any rumour questioning the reality of the death of the Raja Pertab Chunder.

Cross-examined by Mr. Morton.—Dr. Coulter was on friendly terms with the young Raja, but I do not know whether he ever before prescribed for him; but the young Raja often got medicines for his friends. On the occasion I have just now particularized, Dr. Coulter was called to see him professionally. I cannot tell the duration of that visit. The young Raja was at that time able both to speak and understand what was said to him, and he recognized Dr. Coulter. I know it was some time in December, from the circumstance of its occurring almost immediately after I had my appointment. I was then about 19 years old.

Re-examined by the Judge.—I never saw the prisoner who states himself to be Raja Pertab Chunder, to the best of my recollection.

The Civil Surgeon having examinnd the Rajah of Hurdhun, reported, that he had a slight cold, but he was not so severely indisposed as to be incapaciated from attending the Court.

Mohebollah was in consequence of this report recalled, and his depositions proceeded with. He added, I saw the Rajah of Hurdhun at Culna. In the month of Chyt, on the 7th or 6th, I heard that a person who calls himself Rajah Pertab Chnuder, of Burdwan, was coming with a large armed force to Ombicah. When I heard of this, I sent notice of it to the Magistrate of Burdwan, and I received a perwanna from the Magistrate's office either on that day or the next,—ordering me to report daily whatever occurred there, and to state whenever any persons on the part of Prawn

Baboo, and *the soi disant* Pertab Chunder, would arrive there; and not to let any of them go about the city armed, and to prevent all riot and collision between the parties. For four or five days after this nothing occurred, and I dispatched a person to Nyhutty to see whether any person had arrived there, or at Chinsurah, Treyany and other places. The peon who went to Nyhutty Bhatpara, reported that he had seen near that place, *pseudo* Rajah Pertab Chunder coming with a large mob all armed with muskets, and in great state, towards Culna. When I heard of this from Ameer-Oddeen Burkundauze, I sent a report of it by him to the Magistrate of Burdwan. After a few days I learnt, that this *pseudo* Rajah had arrived at Sootraghur, near Santipoor with his rabble, and I then proceeded there, and by inquiries ascertained the information to be correct, and that his boats were moored off Ramghut. A few days after this, that self-styled Rajah, in a beauleah, with some persons, and some four or five men in boats, with drawn swords and shields, roving all day, and some four or five men with drawn swords and spears following them on the bank. I met and stopped them at Tultullah Ghaut, near Culna, and I seized the sword of one ef them, Baukar Sing, and told him that the Magistrate's order to me was to prevent any armed persons from parading the town from the other side, therefore he must not go about this city thus armed. The man began to argue with me, and the *pseudo* Rajah called me towards him. The thana mohorer and I, went to him, and he saw this Rajah sitting in a chair on the roof of the boat, with a naked sword in the hand, and a person was every now and then bringing some liquor to him from below, which he drank. When we arrived near the Rajah, he asked us "what are your orders regarding me and my train?" I told him my orders are to preserve the peace and see that no armed persons of either party land, and it is forbidden you to go about the country with such a large body of men armed. The Rajah replied, "today I have come merely to see this town with a few followers, the rest of my retinue will come here in a few days. I am now going to return to Santipoor, but when the gentlemen who are with me will arrive, I will then come here, and then proceed to Burdwan to be recognised by the Rannees there;" and the mohorer, the two jemadars, and a few burkendazes went with him a part of the way towards Jaulipoor, I and the mohorer in his boat, and the rest on shore, and when we arrived at Hauspookerie, I landed and returned to Culna, and the next day, at about mid-night, crossed over from Santipoor and arrived at Culna, he, with all his followers and moored his boats of the Putheeria Mohul Ghaut. I despatched a purwana to the Magistrate of the occurrence of these two days, and after this I proceeded to the Rajah's people and told them that this is the Sudder Ghaut, and many respectable women come to bathe, therefore they must either moor either above or below the ghaut, so as he keep the ingress or egress to the ghaut clear. The men replied very well, we will tell the Rajah of this, and remove the boats in a day or two, and they accordingly took the boats in a few days to the West side of the Tultullah Ghaut, where some boats were moored ashore, the other anchored in the stream, and thus for a few days the Rajah, on the evenings and the mornings, sat on the top of his beauleah, and the servants of the town daily assembled in crowds of four or five thousands to see him. His men often landed and bought their victuals, cooked them, and went back again, and occasionally the Rajah went coasting along, shooting, and I on these occasions went sometimes on his boats. One day I heard a great noise and tumult and firing of guns, and on enquiry learnt that the Rajah was going to land. I then proceeded with all my peons to the Putheeria Mohul Ghaut, and at about 10 o'clock A. M. saw the Rajah in a boat moored off shore, and about 30 or 32 of his men arrived on shore, and likewise a tonjoha and a palkee. Seeing this I and the mohorer went on board the Rajah's boat, and saw the Rajah held a drawn sword *in his* hands and a servant every now and then brought him some liquor which he drank. The Rajah every now and then said, bring the red sherbut, and then bring the water, but I knew by the smell proceeding from his mouth, that it was spirits that he was drinking. I told him it is useless your opposing the legal authorities; you are expressly forbidden to land armed, and you will not be permitted to land thus, and if you attempt it, you will be opposed and bring yourself into trouble. If you wish to land peaceably with a few servants, I will accompany you and see that no person molests you. The Rajah then replied, that unless his people were allowed to accompany him, he would not land, because he was afraid to land otherwise; and he then moved the boats in a easterly direction towards Kally Khall and the 30 or 32 men walked along in the same directions on shore and about 10 or 12 boats likewise followed them, filled with his attendants. On his return from Kally Khall, the Rajah took a gun from one of his followers and fired it. I remonstrated with him, and said it was unbecoming his dignity to misbehave himself thus. The Rajah then desisted, but he ordered his people to get themselves ready, for he would go and visit the Shrine of Lall Jhee Thakoor of Culna, and although deponent used all the arguments and means in his power to dissuade the Rajah from landing, still the Rajah persisted and landed with about 200 or 250 men armed, and a mob of 200 or 250 boatmen, &c. conveying torches followed them. They disembarked at the Tultullah Ghaut, and passing Luckygunge's tank went towards the south-east to the Rajah's

burying ground at Culna, and deponent with some of the police people followed this cavalcade, and saw two sepoys on guard at the doors of the Rajah's burying ground. When the *soi disant* Rajah arrived there, he asked who are these men, and I replied that these are sepoys on duty at the burying-ground of the Burdwan Raj. The *soi disant* Rajah ordered one of his followers to snatch the muskets from the men on guard. I then endeavoured to dissuade him from these rash attempts and told him that it would lead to a serious riot, and with difficulty persuaded him to desist from this foolish freak and turn towards the west. The *pseudo* Rajah expressed a wish to go through the village. I said if you go through the village, the streets being narrow, what with your attendants and the spectators, serious injury will ensue, and prevailed on him to take the road skirting the town on the banks of the river; and on arrival at Juggernath's temple, he took the road towards the Ghaut and returned to the boats. After I had seen him on board, I sent, in conformity to my orders, a report of the day's proceedings to the Magistrate at Burdwan, and I stood with my peons at the Ghaut to see that this Rajah may not land again with his armed followers. A few days after Desserut Paluk, the Jemadar of the Kunchunagur thana, arrived at Culna with 25 Burkendazes and brought a purwana to assist me. I had this purwana read to the Rajah in his boat, the motive of which was to prevent a breach of the peace. I am not sure whether I went on the boat to have the purwana read to the Rajah, or I stayed on shore and sent one of my men, but Dusserut Paluk, I believe, was one of them that went on board and read the purwana to the Rajah. The Rajah gave an ambiguous reply, which I do not remember, but it is inserted in my report to the Magistrate of Burdwan. I am not certain whether the thana mohorer or my assistant wrote this report. Soon after this, Ramsing, acting jemadar, arrived with 30 Burkendazes and a purwana to my assistance, and by this purwana I had orders to disperse the armed assembly. This purwana was likewise examined to the Rajah and his men by me, and the darogah of Santipore and of the neighbouring villages, came with some Burkendazes and the girdwaree boats, to assist me to disperse the concourse. The Darogah went away that day; but the jemadar and the men remained with me 3 or 4 days; they failed in the endeavours to disperse the mob. After this the Foujdarry Nazer Assad Ullee, came with some burkundazes to my aid. When the Nazir had arrived I was on my way towards Mr. Shaw's boat, where I was going to pay respects to him. Hearing of the Nazir's arrival, I could not see Mr. Shaw and returned to see the Nazir. The Nazir's purwana was to disperse the assembly of the Rajah and to take him to the Magistrate of Hooghly. The Nazir, I, and some burkundazes, went on board of the Rajah's budgerow. We saw the Rajah and Burdwan Rajah there. This Rajah took the purwana in his hand and deponent thinks the Burdwan Rajah did the same, and the people who could read the purwana but who made out the purwana to the men I cannot tell. The *soi disant* Rajah said, these men are not fighting men; they are my servants and followers; they have come with me from Calcutta, and I will not disperse them by your order, nor can I give any reply to this purwana. Now, Mr. Shaw, my Attorney, is arrived, I will consult with him and let you know the result in the evening. I said to the Nazir, let you, I and some burkundazes go to the Rajah's house. We together with Gound Jemadar, Gound Peon, Shamchurn Peon, Nemychin Chowkyder, Sumboo Lolla, Tyaed Nunees and others, whose names I do not remember, went on shore near the budgerow to take the Rajah's reply. The Nazir remained on shore and I and the others went on board a boat with intention to go on the Rajah's budgerow, but the people on board said they were forbidden to let so many armed men come on board the Rajah's boat. I then desired the Rajah's men that we go with an order from the Magistrate, as I must carry it into effect. Hearing this the people from the boat called me. I then went with my men on board the Rajah's boat, and asked the Rajah's reply to the purwana. Deponent saw Mr. Shaw and the Burdwan Rajah there likewise. The purwana was first read by Hurroo Chunder, the pseudo Rajah's moonshy, and as he could not see clearly, Lalla Sumboo read it. On hearing the contents of the purwana, Mr. Shaw told Joynarain, his sircar, who explained to me that these men are the Rajah's servants and attendants, they had come with him from Calcutta; they as well as I will go with the Rajah to Burdwan to be recognized by the Rannees. The others said, these men are going, it appears by this account, with the sanction of Government, to see the Rannees at Burdwan, how can they be prevented? and as we were leaving the Rajah's boat, Mr. Shaw desired me to send a person to call the Nazir who had returned to the house. Hearing this I went to the thana, related what had occurred to the Nazir, and as I was greatly fatigued and felt indisposed, I retired to my dwelling and the Nazir took any assistant with him to make a report of these proceedings to the Magistrate. One or two days after the Nazir's arrival, I learnt that the Magistrate had also come to Culna, and I went and waited on them that night and saw the Magistrate, the Doctor, the Clergymen, the Captain, and a Lieutenant. The Magistrate interrogated me, and when I related all, he replied, I will go the next morning to see the assembly stay here. There were some sepoys with the Magistrate. They went the next morning to the river side where the Magistrate asked me where is the Rajah's budgerow,

I pointed it out to him from the shore. The Magistrate desired me to hail Rajah's budgerow and desire him to come ashore. I did so and told them that the Magistrate had come with the military. They neither replied nor came. The Magistrate then desired me to go on board and fetch the Rajah, and whilst I was going in a punshway towards the Rajah's boat, the firing commenced by the sepoys. I was to the west of the firing party. I shouted out to the Nazir to cease firing, whilst I was going to the Rajah's budgerow, and when I arrived there after the firing, I could not find the Rajah there, but I saw a Hindu living there wounded and as I was proceeding to search for the Rajah, I saw the Rajah of Hurdhen in another boat, subsequently observed a person swimming across the river. Fakeer Lall and another Jemadar, with some sepoys and burkundazes, were on guard on the other side, and I called out to them to seize the man who was swimming across, and they replied that they had captured the man, who, on my and the Magistrate's arrival, turned out to be the *soi disant* Rajah, and we brought him on shore to Culna, guarded by the sepoys. The other men were in the interim captured by the sepoys and the other men, and the Magistrate from that day commenced searching the boats, and in which the other gentlemen, and even Mr. Shaw assisted, and found the various arms, and two pistols, three or four muskets, and seven or eight swords were found in the Rajah's boat, and the others in the other boats, which had accompanied this Rajah.

Cross-examination.—Ghosaul accompanied the pseudo Rajah. The Rajah was in the tonjohn and Ghosaul in the palkee. The Hurdhun Rajah said, when captured, I only came to see the Rajah, what have I done. He could not give any account of Pertab Chunder at the time. There were upwards of 300 arms of various descriptions found in the boats. This Rajah expressed a wish to have the proceedings of the nazir read before his mooktar Ghosaul. There was an English letter in the proceedings, which was left in the Rajah's proceedings at Culna. When I went with the purwana of the nazur to arrest the soi-disant Rajah and forward him to the Magistrate at Hooghly, I was afraid to execute my orders, because this Rajah had many retainers by him, and I dreaded that if I proceeded to extremities, a breach of the peace would occur. The further examination of this witness was first moved till 10 o'clock, A.M., and the Court broke up at about 5 o'clock P.M.

Mohebullah cross-examined by Mr. Shaw. The soi-disant Rajah only landed once at Culna; on another day, he wished to go on shore, but at my advice, he desisted from his intention. He was altogether, I believe, either 18 or 19 days moored off Culna, but I am not certain of this. On the day that the soi-disant Rajah landed, he told me he would go and see the city and visit the shrine of Lallgee, but what his real motives were, I cannot say. I was examined regarding this affair at Culna and at the Calcutta Police Office. I there deposed, that there was no affray between the parties, because I prevented a collision between them. That part of the order which forbade the soi disant Rajah landing with an armed retinue, he did not obey. He did obey my order, which forbade his entry into the city with his followers. He disobeyed the purport of the first purwana, which must be with the files of the proceedings. This purwana was read to pseudo Rajah, but who read it I do not remember; yet this I know, that all the purwanas which I received on this occasion, were read to this Rajah, and were verbally explained to him and his followers. The date of the first purwana I do not recollect. In one of the purwanas it was stated, that there was no objection to this person coming to Culna, but he must not enter it with an armed multitude. I think, on the first occasion, he allowed himself to be dissuaded from coming with his tumulous body of men, and that the actual landing of them happened subsequently; but on this point I am not certain, the Magistrate's proceedings will show. I can understand the records of my proceedings in Persian, when read to me, but those of others I do not. I have but an imperfect knowledge of the Persian tongue, and I cannot converse in it. My reports to the Magistrate, relative to those proceedings, were made in the first instance in the Persian, but subsequently, I believe, an order came to forward them in the Bengally. The date of the substitution of the Bengally in lieu of the Persian, must be recorded at the thana, but I do not remember it. The thana mohorer, Mahomed Ally, wrote some of the reports, my writer, Mahomed Asoph, wrote the others. Mahomed Ally is a witness for the defence, he has been discharged from his situation; and Mahomed Asoph is also at Hooghly; he accompanied me here. On the night I saw Mr. Shaw in the Rajah's budgerow, I do not remember whether I did say to Mr. Shaw, that I had no cause of complaint against this Rajah. I do not think I said so; if I did, I certainly have no recollection of it, nor whether Mr. Shaw told me to give my order to disperse the assembly, and it would be obeyed. On that I replied, that I had no power to do so, as it rested with the nazir. The nazir went first to the Rajah's budgerow, on the morning of his arrival at Culna, and subsequently after the Magistrate's arrival. The time that the nazir and I went on board this Rajah's budgerow, I saw the Rajah sitting on a chair in the budgerow. This Rajah said, that after consulting Mr. Shaw, he would give a reply to this purwana; this reply was given shortly after dusk. This reply, which was verbal, communicated to the nazir immediately afterwards at the thana. The date of this communication I cannot remember, but it was on the day on

which the nazir had arrived. The Magistrate arrived a day or two after the nazirs arrival. My report to the nazir was the first intimation he received of the prisoner's intention, and on this he acted, and reported this reply to the Burdwan Magistrate. On that night, Joynarain Baboo went with an English letter from Mr. Shaw to the Magistrate, and desired the nazir to forward it to him. The nazir replied, that he had come to disperse the assembly and not to be the channel of written communication between Mr. Shaw and the Magistrate, therefore he would not receive it; and if Mr. Shaw wished it, he might send it to the Magistrate by dawk. The letter was from one European to another, but whether it was written in English or Persian, I cannot say. There might be a Persian letter brought by Joynarain Chunder, written by the Rajah to me and the nazir, and read by the latter in my presence; but I have no remembrance of it. The two letters sent by this prisoner, between the arrival of Mr. Shaw and the Magistrate, were kept by the nazir, and whether he delivered them or not, I cannot say. He merely at the time he received them remarked, that he must report this circumstance to the Magistrate, as he was incompetent to pass any order on their purport. There was a gun in Mr. Shaw's boat, and a few shots and a little powder was found in one of the boats, but in which boat and in what quantity, I cannot remember. nor the date in which this Rajah landed at Culna with his retinue; but I reported this circumstance on that very day. I was called before by the Magistrate, to explain why I did not transmit the roport of the Rajah's landing instantly as it occurred. I made the report on that very day, but when it was dispatched I am not aware; but two days could not possibly have intervened. I must have sent it off that very day. I am acquainted with Peary Lall Baboo; he resides at Culna. He is not a servant of Government. I am not aware whether he is a salaried servant of the Rev. Mr. Alexander. Why he went to arrest Mr. Shaw, he can best answer. The respectable merchants residing in Culna gunge are—Thakoor Doss Dey, Ram Mo-Mohun Ghosaul, Callychurn Chatterjea, Issur Chunder Chowdry has a shop there, but he resides at Ranah Ghaut. I was afraid to attempt to execute the Magistrate's order, and consequently did not endeavour their execution, and with the exception of my own apprehension, there was no forcible resistance made to my carrying my orders into effect; but on the evening I proceeded with my armed men to the Rajah's bauleah, I was prohibited from going there. Who gave the orders I do not know but the opposition was made by this Rajah's guard. Ultimately I did go on board with four or five burkendazes. This is the sum total of the resistance that I am aware of.

Questioned by the Rajah of Hurdhun. I made a report of your arrival on that day, but its purport I cannot recall to memory. I reported to the Magistrate of your being in a boat, and he arrested you. Whether your boat was shoved off from the pseudo Rajah's boat or not, I cannot state; but when taken, your boat was on the river. I am not aware whether any arms were found in your boat, and whether you had any armed followers or not, I cannot say; but there were some men in your boat. Whose retainers they were I cannot tell. I neither saw you lead or cause any disturbance either on shore or the river.

Questioned by Ghosaul. After the Rajah had returned from his airing execution you left Culna with a mooktarnuma from this Rajah to Burdwan, I made a report of your departure to the Magistrate, but I never retarded you or any of your party. I never gave any advices to you, I merely said that if you or the Rajah wish to go singly, or with a few attendants to Burdwan, I will see you conveyed there under the Police protection; but I cannot permit you either to land with armed retainers or proceed with them to Burdwan.

Questioned by Hafiz Futehola. The day the Rajah was at Santipoor, you, Moolchund and others, came to me at Culna, informed me that you were all the Rajah's men, and asked whether any purwana had been received by me regarding the coming of the Rajah to that village. I replied, that a purwana regarding the Rajah had been received, but not on the point they wished to know. You never questioned me as to where the Rajah's boats were to be moored on the day of his arrival at Culna, and I never indicated any spot for you to bring them to, I explained all the purwanas to you, and all the chief men about the Rajah, but they were not all obeyed by you and your party.

Govind Sing, burkendaz deposed to the pseudo Rajah's arrival at Culna, accompanied by a large concourse of armed men in boats, with great pomp, steamers flying, kettle drums and other musical instruments beating, &c., &c. The rest of this deponent's evidence was but a mere confirmation of the deposition of the former witness.

Previous to the examination of this witness, the Hurdhun Rajah filed a vakalutnama, in the name of Brizah Hossain, a vakeel of this Court. Whilst Mr. Shaw was cross-examining Mohebollah, Mr. Curtis suggested, that perhaps it would be more regular if Mr. Morton, who is the Counsel of the principal prisoner, were to put the questions. This opinion he expressed in accordance with the prevailing practice in the Zillah Courts, where there are both vakeels and a mooktar retained in a suit, in which case it is usual for the vakeel alone to

put these questions to the witness; the same as the practice in the Supreme Court, where the Attorney suggests the questions to the Counsel and he puts them to the witness. Mr. Shaw imagined at first, and Mr. Curtis had objections to his continuing the examination, and declined to continue it, although Mr. Morton remarked, that Mr. Shaw being personally conversant with the facts of what had occurred at Culna, he had taken upon himself to examine his witness, and both he and Mr. Shaw acted under one mooktarnama and it was not until Mr. Bignell had explained the practice of the Mofussil Courts and the Judge's reason for making the objection, and the Judge had assured Mr. Shaw, that he had now no objection to Mr. Shaw's cross-examining the witness, that Mr. Shaw resumed his queries to him.

Mr. Bignell informed Mr. Morton that under the impression that the case for the prosecution would not be closed until the 15th proximo, the Magistrate had fixed the day for the attendance of the witnesses for the defence for that date; but as it was not probable that the prosecution would be prolonged to that period, he suggested to Mr. Morton, that if he would give him the names of 30 or 40 of the defendant's principal witnesses, the Magistrate would fix an earlier day for their attendance in this Court, so that they might not be delayed in opening the defence. Mr. Morton replied, that Mr. Graham knew best what witnesses were required by the defence and he would mention this circumstance to him.

Pearymohun Lalla deposed. I only know the soi-disant Rajah and none of the other defendants. In the month of Sraban 1241, the pseudo Rajah, a Brahmin and a kidmutgar came to my house and said, that they came to see the idols. They remained one month at my house and I reported their arrival to the village thana. They said to me, you will hear of a very wonderful event shortly in this world, but they did not enter into any particular detail of what this miracle was to be; and after they had resided one month with me, they abruptly went through my garden and disappeared, and I subsequently heard that they had proceeded to Baranuggur. I next saw him on the 1st of Bysack of the present year at midday. I was standing at the door of my house there, when I heard a great shouting and several people explained that the Rajah was coming. I then went to see the cause of this uproar, and when I arrived at the river side, I saw the pseudo Rajah sitting on a budgerow, wielding a naked sword; and a boat went ahead in which people were beating kettle drums and other musical instruments and followed by an armed retinue of 5,000 men. He moored his boat at the ghaut where dead bodies were burnt, and began to threaten the darogah by shaking an undrawn sword over him, as the darogah stood on the river with his cloth tied round his neck and held by his 2 hands. This Rajah told one of his men to call the darogah to him, and a Brahmin called out darogah, darogah, the Rajah calls you. The darogah came and they took him upon their boat and carried him as far as the Satgutchea ghaut and there landed him. The darogah returned to the thana, and this Rajah to Santipoor. Ramdeeu Jemadar went in a paunshay to the Rajah at Santipoor, and we retired to our house. The next day this Rajah returned with 80 boats and 5,000 men, beating the kettle drums and firing guns, and anchored off the Putturrea ghaut. The Rajah staid there 18 days. One day the Rajah went to see the Rajah's burying ground, the darogah was near the burying ground. There were 5,000 spectators and 2 men on each side of the Rajah's conveyance, and the Rajah held an undrawn sword in his hand, and 200 persons armed with swords and fire arms and 500 with clubs, &c. followed this Rajah, crying out mar, mar, (beat, beat.) The darogah and the peons stood with their hands in supplicating postures with their clothes round their neck, entreating them to desist from their excursions and accompany them to Burdwan. On that day there were 4 or 5 sepoys on

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guard at the burying ground. This Rajah seeing them said who are these, and being told they were sepoys on guard at the burying ground, said snatch their muskets and bring them here. The darogah then cried out for mercy's sake forbear. The Rajah then desired and returned to his boats, and the day before the arrival of the Magistrate, I heard it bruited by the populace that Mr. Shaw was coming with guns, cannons, balls, and a large force, aided by the Government purwana, to place this Rajah forcibly on the guddee of Burdwan. The next day a Police peon informed me, that the Magistrate wished to see me. He look me to the clergymen's house, where I saw him and the Magistrate. The Magistrate said to me, the pseudo Rajah, I hear, lived once in your house, you must depose on the circumstance. I denied this at first; but being threatened, I commenced my depositions; and whilst under examination, Mr. Shaw's palkee passed the place, as there were no police peons there the Magistrate ordered me to go with a bearer and bring Mr. Shaw to him; and Mr. Shaw obeyed the call, and when he came to the Mrgistrate, the Magistrate sent for the darogah, and when he arrived, Mr. Shaw was consigned to his custody.

Cross-examined by Mr. Morton. I saw no disturbance of the peace created by this Rajah during his stay off Culna. I only saw him land at Culna once. There were two or three musquets carried by the Rajah's man. On the day he landed there was some firing after his return to the boats.

Komul Roy, deposed as to what transpired on the day the pseudo Rajah landed at Culna, in confirmation of the evidence of Mayboollah darogah, and Govindo, Burkundaze.

Fakeer Lall Paunds deposed. I recognize the pseudo Rajah, the Hurdhun Rajah, Rada Ghosaul and Futtahollah. I arrived in Culna with Dussuret Patuk and 24 burkundazes from Burdwan, on the 11th of Bysack, where I first saw these four persons. We were deputed to aid the Culna darogah, and brought a purwana, which the mohorer explained to the pseudo Rajah. This deponent followed in the wake of the other deponent regarding the occurrences of what had transpired at Culna; but it appears that he had arrived at Culna, after the landing of the Rajah at Culna, and that he had never seen the Rajah himself, until he was arrested on the Santipore, side of the river, on the bank he was on duty on the day of the capture and dispersion of the party. This witness added, that previous to the firing some boats took flight; that on the firing in the air, the Rajah jumped into the river, and he arrested him near the banks of it. At the time of his arrest, he was up to bis chin standing in the river, trembling. Deponent and Nundoo Lall took him out of it, gave the Magistrate notice of his capture, and that gentleman, together with the others, came over in a boat and took the prisoner to Culna and made, him over to the darogah of that place.

Nundoo Lall, burkundaze alluded to by the last witness, confirmed his evidence of the capture of the pseudo Rajah in the river, on the Santipore side, on the day in which his tumultuous assembly was dispersed by the Magistrate of Burdwan, aided by the military force. He likewise recognised Narrain, Hurryroy, the Rajah of Hurdhun, Radakissen Ghosaul. Hafez Futtehali and Sugur Dhon, as being amongst the followers of the soi-disant Rajah on the occasion of his stay at Culna.

On Thursday the 22nd instant, as the Court was breaking up, the Reverend Mr. Hill, of Berhampore, came in, and addressing the Judge stated, that he believed he was in possession of evidence which would set the question of the prisoner's identity at rest. Mr. Curtis observed, that in that case he had better communicate with the Counsel for the prosecution. Mr. Hill, it appears, then communicated to Mr. Bignell the name of a witness resident on his Missionary premises at Berhampore, who was immediately summoned, and who was this day produced.

Ramkissen Mookerfea, a Christian,

sworn on the Bible, after some questions from the Judge as to his knowledge of it, and the nature of an oath. When I was in caste my father's name was Gungadhur. My name was always Ram Kissen; but I was once called Keerpanund. My house is in Kassea Dhunga, in Zilla Nuddea, and my age is thirty. (The Judge desired him to look well at the prisoner, which he did. I know him exceedingly well; knew him four or five years before he came out with this story of his being a Rajah. The prisoner's name is Kisto Lal. His brother's name was Gour Lal. His father's name is Sham Lal Bramacharee. His brother died in Rada Kissen Bysack's house, at least I heard so. During these four years I was with him every now and then from time to time. About two years ago, in the month of Assur, I think, the prisoner first raised this report of his being a Rajah in Burdwan. He had two brothers, Gour Lal and Kisto Lal, whose houses were in Kishnaghur. I once, during the four years, I have mentioned, went to their house. I had a great deal of conversation with them, and they proposed to me, that we should go out together into the world as fakir and travel through various countries. The prisoner was during this time eating and smoking Gunja, and the conversation was chiefly with the elder brother, Gour Lal. The prisoner, however, remarked, that he was going to make a charm. In Jait, the prisoner's brother, Gour Lal, came to my house and ate some fruits and drank some milk; he reminded me of the conversation we had had about turning fakirs and travelling, and asked if I was ready to go. I said I was. He remained all night in my house. Early in the morning, he told me to come with him, and we went forth. We went first to a village called Purlee, and afterwards to Kalikapore, then to Deewangunge, after that to Culna, to a Goosseein's house, named Baneemadub, where we put up for the night. The next day we went to a place called Rira, and put up at the house of a great man called Sreekunt, zemindar. We then went to another village, the name of which I do not recollect. In this way we went from village to village till we came to one called Goondereeya. We remained there about two or three months in the house of two brothers Gour Hurri and Kisto Hurri. We then went to a Thakoor Barri, where we staid with one Gourdial Baneerjee. We were afterwards some months in Laboursa, and then we returned to Gwarri, we there heard from Shamlal, the prisoner's father, that the prisoner had gone to a village called Mussa, in the district of Burdwan. Gour Lal then said let us go to Mussa *Gong* (village). I said, I wanted to go home; and some of my relations afterwards came and took me home in a panswav. I remained two or three days at home. Afterwards Gour Lal came to me at night; he did not come to the house, but waited for me on the road. A man of the name of Goluk Mundul came to my house and told my relations that I would again be taken away, as the Goossain had returned. Shortly afterwards I went out and met Gour Lal, and told him that I would make my escape and come to him in the morning. I did so, and went on board a boat with him to Malteepore in the Culna thanah. I remained there two or three days, and then went to Mussa Gong (the village of Mussa) to the house of Buddun Chowdree. We went and found the prisoner there with two or three other men his *Chalas* (religious pupils). Their names are Gunees Bannoorjee, Teelook Chund Chowdree, Mudden Mun Mustana, thus named by the prisoner, from his being always drunk. The prisoner was in great state with a fine carpet, a person punkering him and sitting on a *tukta posh*. His disciple Teeluk Chund was preparing gunja with a *daw*. The prisoner had on red clothes such as red Bramacharees wear. His face had become very thin. His hair was very long and hung down to his breast, Budun Chowdree remained inside the house. The prisoner remained in the centre house which consisted of three mehals. We remained there about two months, and Gour Lal said, "Listen, let us go with my brother to Gwarri."

Buddun Chowdree gave the prisoner bearers and a palkee and sent him off; but we did not go to Gwarri. The prisoner Kistololl said, I will go to Burdwan. I said, "very well, I will go with you." After that I went with him towards Burdwan. On the road there is a village called Burseeya. We there remained in the house of a tamooli during the night. His name I do not know. Next morning we went on towards Burdwan and entering the city, went from place to place, visited the gardens to the north of a large tank and other parts of the town. No one would give us a lodging, and the prisoner went to the door of the Raj Barri, called the *Baruh Dwarri*. The people asked him "Gossain, why are you come here?" and told us to go to the Mosaffir Khana where travellers are fed. From thence we went to Tail Marwee to the house of Juggut Mittre, a Collectory Mahurrir, who gave us food and every thing necessary. The prisoner had formerly been acquainted with Juggut Mittre when he (the prisoner) was an Oomedwar, and they talked over their former acquaintance. We remained there some days and then went to Kinchinuggar to the house of a woman named Tara who waited on him. We remained there two days or so, and then returned to Mussa. We saw that his brother Gour Lal was there in Buddun Chowdree's house, drinking and going on with woman as usual. Gour Lal then proposed to me to go back to Gwarree with Kisto Loll. We went accordingly to Malteepore, where we remained in the house of one Ruttun Chatterjee. After a few days I became very ill, and the prisoner pretended to be able to cure me by giving me the water he had washed his feet in to drink; and also told me that he was a new incarnation of the Deity, and that he could do any thing and would make me well immediately. He often talked thus and used to say, you will see some of these days what I shall do in the world. I got a little better after a while, and Ruttun Chatterjee provided a dingy in, which the prisoner, Ruttun Chatterjee and, I think, Jagurdhur went to Gwarri to the house of the prisoner. He was welcomed by his father, and I here got well. He gave me a blanket and a hookah, and an old piece of broad cloth, and I went home. My relations were very angry at the prisoner for having taken me from my home, and I determined to abandon this course of life and to commence trading, and took some money and went to buy material, at my uncle's house at Ireccincth with the intention of trading. While there, the prisoner's brother, Gour Lal, came in search of me. He learnt from one Dinonath Gungoolee where I was. He called me and I went to see him at the house of Doorga Mungle Dass. Gour Lal here tried every thing in his power to induce me to join them again; said my fortune should be made that they had got a plan which would astonish the world. At last I consented and found that Gour Lal had obtained the same influence over a number of other respectable men as he had over me. Among them were I know Hajra, Ramsoonder Tarkabaggis, Dinoonath Gungoolee, Doorga Mungle Doss, &c., who were devoted to him, and considered him as a deity. We all collected together and used to get drunk, and to sit continually with women, and practice all sorts of obscenity, until the Treekhand people rose against us and said we should no longer pollute their village, and Doorga Mungle's caste all consulted about depriving him of his caste. Doorga Mungle Dass's Gooroo is still in Treekhund, and knows all these things. Doorga Mungle on this said, that he must keep some servants for his own protection, but the villagers felt some superstitious scruples about touching Gour Lal, and they were allowed to remain in the village. After this I went home, and Gour Lal went away somewhere else by himself. The prisoner was at this time in Baranagore. Gour Lal came and took me and Doorga Mungle Dass, and Ramchunder, Dinonath Gungoolee to Gwarree. On the road to Gwarree we passed my house, and we went in. We remained there one night, and next morning went on to Gwarree

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to the prisoner's house. His father Sham loll told us, that Kistololl was in Baranagore in the 24 pergunnahs. He told us all to go there and bring him back as he had not seen him for some time. I, and Doorga Mungle, and his khansama Konaee Naee and Nuboo Mullic and Gour Lal all got into a boat and went to Baranagore. On arriving there at the house of a woman who goes by the name of Nedhee's grandmother, we found the prisoner Kistololl, who had got very fat, had a beard and long hair all about him. He had an English mug for drinking out of, and all the women of loose character in the place used to assemble round him, and they used to drink together. There is a house of Raja Greeschunder's in that place (Baranagore) where the prisoner once went, but the Raja drove him out on seeing the crowd of women with him. We remained some time in Baranagore. Ramchand Banerjee, Kali Chatterjee, and others there, used to come to visit the prisoner. Doorga Mungle and Gour Lal, tried to get the prisoner to go home, but the women of the place were very unwilling to let him go and we returned alone, leaving Gour Lal with the prisoner. We went home. The prisoner and his brother returned home also about a month or so afterwards Gour Lal then went to Sreekhund with Sagur Dhur, one of the prisoner's present. I also went and joined them at the house of Doorga Mungle. Gour Lal asked Doorga Mungle to come and pay his respects to Kistololl. Doorga then sent Sagur Dhur and Nubaoo Mullick to Gwarree to fetch the prisoner. They brought him back in the boat and fastened the boat at the Dewangunge Ghat. They then sent information to Gour Lal of the prisoner's approach. Gour Lal then took a number of men with swords and a sort of retinue to bring him with honour to Sreekhund; but he said Dewangunge was the best place, and he would remain there and wait for a lucky day. Next day I joined him, and we then went to Cutwa. His people in Dewangunge gave out that he was an Avatar, and in Cutwa it was proclaimed that a man had come whose body was made of gold. At Cutwa he lived in the house of a prostitute of the name of Hara. There was a great noise made about him at Cutwa, great crowds assembling to see him. I seeing this went back to Sreekhund, and a few days afterwards returned to Cutwa. Doorga Mungle then came with a palkee, but whether he or his brother first got into it I don't recollect. There was an enormous concourse of people and a great tumasha, and we all went with prisoner and his brother to Doorga Mungle's house at Sreekhund, where the prisoner remained for about a month. The people in Sreekhund jeered at them for coming back after having set out with such boastings, and we were discontented and spoke to the prisoner, who said "be quiet, wait a little, and you shall see a tumasha. I shall get the Burdwan guddee and you shall all have great wealth. The two brothers used to be constantly consulting together. At last Doorga Mungle gave a palkee and bearers, and money for road expenses, and the prisoner started for Burdwan in order to commence his great attempt. Previous to going, he said you shall soon see something. You shall not be long in hearing of my being a Raja." I did not accompany the prisoner, but he afterwards told me he went straight to Golab Bagh. His younger brother Gour Lal, frequently said, "we shall soon hear now of his being Raja," and the people at Sreekhund where Gour Lal and I were, all full of the new report of Pertab Chand's reappearance. I heard from Gour Lal, that the prisoner had gone to Kinchinuggur, where he lived in one Kumul Raee's house, and that many people came to see him. I afterwards heard that he had gone to Bishenpoor. Gour Lal then said to Doorga Mungle, Kouaes, Suroop and myself, "come, my brother has become a Raja, let us go to Bishenpoor and join him." We then all set off to Bishenpoor. On the road, Doorga Mungle and Unoop began to hesitate, saying, that it seemed a very doubtful matter, and at last they got alarmed and ran away. I remained alone with Gour Lal, and was fettered like

many others by the influence he had acquired over me. When we approached Bissunpoor we spread report that a Nawaub had come. We went to Jamkooree to the house of Rajah Jey Singh, where Gour Lal had some consultation with the Rajah as to the best means of gaining possession of the Raj of Burdwan. We then went on to Bishenpore, and intelligence was sent to the prisoner that a friend was approaching. The prisoner then sent burkundazes with torches to bring Gour Lal. We arrived near Bishen pore at night, and the whole population came out to see the Nawaub as he now called himself. The burkundazes cleared the way with great shouts of the Nawaub is coming, the Nawaub is coming, and we entered Bishenpore in great state. Here the two brothers met. Khittermohun Singh, the Bishenpore Rajah, made over Radhakissen Ghosal, a servant of his, to the defendant to advance his fortunes. One of the prisoners at the bar is Radhakissen Ghosal. Khittermohun Singh then sent Gour Lal to the Nawaub, as he was now called, to live concealed at his son-in-law's in Doolee in order that their proceedings might not attract so much attention. There had been some consultation regarding this step between the prisoner, Khittermohun, Gour Lal and Radhakissen. I went with Gour Lal and occasionally came over to Bishenpore to see the prisoner During the prisoner's residence there, Mr. Elliott came and sent for the prisoner, and asked him who he was. The prisoner replied "all the world know who I am." Mr. Elliott said, you must tell me yourself who you are. On this he said I am Alak Shah, Fakeer. Mr. Elliott said if you are a Fakeer what business have you with all these people? The prisoner replied, I am in some fear of my life. I am afraid of Purran Baboo. Mr. Elliott asked what he had to fear from Purran Baboo, and told him to leave the place. The prisoner asked Mr. Elliott to give him some assistance to enable him to do so. Mr. Elliott asked why he should give him assistance, and told him to be off. Mr. Elliott then returned to Bancoora. The two brothers then had a consultation as to the course they should pursue, and at last we all set off for the Jungles with about 100 armed men. We moved about from house to house and place to place until we came to Berooa, where the Rajah Gournarain's Gooroo lives. We stopped at the house of this Gooroo. The Gooroo sent him to the Rajah, and supplied him with clothes, money, &c. Here the prisoner, with the assistance of the Ranee first commenced his assumption of the dignity of a Raja, hiring servants and getting rich caps and clothes. The prisoner was constantly urging the Ranee to supply him with troops and money, to enable him to seize upon the guddee of Burdwan: after this we all marched towards Burdwan, with a great number of burkundazes and others, and an intention of plundering the city of Burdwan. Near Bancoora, the prisoner sent a letter to the Magistrate, stating, that he was the Rajah of Burdwan, and that he was going to recover his Raj. The Magistrate issued orders that he was not to enter the city; but he came, notwithstanding, with two or three hundred men, and went on to the Balgooma Ghuttee where Mr. Elliott apprehended the prisoner, his brother, Gour Lal, myself, and a great many more, that night escaped and went to Calcutta, where I met Radhakissen Ghosal, who had previously escaped and had come down to Calcutta to do his best to release Kistololl. While there, Radhakissen made Hurris Bannurjea a mookhtar, and sent him to Bancoora to assist the prisoners. I went with him, and Radhakissen also accompanied us; we began to correspond with the prisoners' in jail. Some one gave information, and we were all seized and imprisoned. I was sentenced to three months for corresponding with the prisoner while he was in jail. After my release I wandered about until a clergyman at Cutwa took ohld of me taught me to read the Bible, baptized me, and sent me to the Mission at Barhampore, where I now am.

Cross-examined by Mr. Morton.—I was in no employment when I first knew Kisto Lal. I lived on the produce of my

lakheraj lands. I have never been in any service. I intended to seek for it; but these men, the prisoner and his brother, inveigled and ruined me. I was never the servant of Kisto Lal or Gourlal. On the contrary I have given money to their mother. The prisoner called himself an avatar and imposed upon us; we obeyed him as a superior and as a divinity. I am now a Christian Catechist under the Rev. Mr. Hill. I have been nine months in that situation. I gave Mr. Hill a written narrative of my life when I joined him, which has been sent to Europe for publication. I had had the scriptures for many months before I was allowed to exercise my present functions. It is now 18 months since I was baptised at Cutwa. When I was in prison at Bancoora, I gave in a written paper to the Magistrate stating the whole of the circumstances. I was not a witness. I told the daroga that I would disclose every thing; the daroga told the Magistrate, who sent for me, and made me write the statement on paper. All the witnesses in the case pending before the Magistrate had there been examined. It is now about eight years since I first knew Kistololl, four years before he commenced this deception. It is about four or five years since the prisoner first commenced this. I have kept no account of time, and cannot speak more positively. I know the places where we went and the people who knew us. I recollect how long we remained at each place where we had anything particular to do. Beni Madhub Gosain is a man well known in Cutwa. He has recognised me since as having accompanied Gour Lal. I have no knowledge of years or dates. I do not know how many years it is since we were seized at Bancoora. It was in the month of Magh in the cold weather of some year that the prisoner was seized. I was apprehended in one of the hot months, Cheyt and Magh. I recollect we suffered much from heat. I cannot say how many months elapsed from my seeing the prisoners at Baranagore to seeing him at Sreekand. There were frequently intervals of two months and one month, and sometimes more in which I did not see the prisoner. The money with which I traded was given me by my mother. It was obtained by selling some lakheraj land. The prisoner used to talk of obtaining the Raj, to me and to Sagur Dhur, to Ramchand Muttre, Doorga Mungle Doss, Roopchand Dutt, Nuboo Mullick. He did not give this out publicly, only to those on whom he could depend. When seized at Bancoora, I gave my name as Kirpanund. This name I had assumed by the advice of Gour Lal and the prisoner. The Magistrate discovered the falsehood, and punished me by giving me double irons. I was a party to the deception which these men commenced. I have said so all along, and have no wish to deny it. I committed a great fault. Since I have been a Christian I have learnt to speak the truth. When in Bancoora jail I got very ill and was nearly dying, and I at last told the daroga that I would tell all. My sentence had expired; but they would not let me go until I told my real name, and I thought it better to confess at once. I bore the name of Kirpaund from the time I first turned Fakeer. As far as I can recollect, the plot commenced about five or six months before the apprehension of the prisoner. I would have revealed this even had I not been confined. I have since told it to many. There are numbers who know the truth of my story, and it can be corroborated by the inhabitants of the villages where we lived. I know that Kistololl has marks on his body. He has one of his back, what it is caused by I don't know. It is close to the shoulder blade but more towards the spine. Kistololl knows a little Sanscrit he also knows Persian. I never heard him speak English; whether he knew it, or not, I don't know. He used to sign his grand signature in Persian "*Maha Raj Dheeraj Rayissur Alukho Pertab Chunder Bahadoor, Zemindar, Chucklahi Burdwan Oghyra.*" Kistololl's age, when I first knew him, might be about 28 or 29, but I merely guess so. I don't know how many toes Kistololl has. He may have 20 for ought I know; he can tell himself. The Magistrate of Bancoorah sent me under charge

of a chuprassy to Kishnaghur but there was no investigation regarding what I had stated.

Brevet Major John Marshall, a witness for the defence, who was proceeding up the country, was then called in consequence of a representation from the defendants Counsel, and deposed as follows:—I am a Brevet Major in the 71st Native Infantry. I do not know the prisoner by the name of Pertab Chund but believe him to be the person I used to meet at Chinsurah upwards of 20 years ago, under the name of the young Rajah of Burdwan, and whose name, if I ever heard it, I have forgot.

Examined by Mr. Morton.—I have met the young Rajah several times at Mr. Overbeck's once at his own house, the Rajbarree, once on board his pinnance. I have met him also at Hooghly at Mr. Archibald Todd's. I cannot recollect with precision in what years I saw the young Rajah. I used to be a great deal at Hoogly, between the years 1814 and 1820. I must have seen him frequently at Mr. Overbeck's when he was Governor of Chinsurah, and that was in the years 1818, 19 and 20. I was well acquainted with the young Rajah's personal appearance. Some of his features were peculiar and I noticed them particularly. I saw the prisoner for the first time since his supposed death at Mr. Ogilvy's trial in the Supreme Court. To the best of my belief I had not seen him since 1820, until I saw him there in the witness box. The face being familiar to me and endeavouring to remember where I had met him, I took very particular notice of his features, and on purpose to further gratify my curiosity, and to assist me in remembering where I had seen him. I sketched his profile on my pantaloons, and this was afterwards copied into the *Englishman* for I was then under the impression that the man was an imposter and that I had seen him somewhere in the Upper Provinces. I did not see him again until I saw him yesterday in this cutcherry. I did not then retain my former impression of his being an imposter. Having only yesterday morning breakfasted with Mr. Overbeck in the course of conversation he happened to mention some circumstances regarding the prisoner which I perfectly remembered, and which led me to the recollection of the interviews which I had had with him at Chinsurah, bringing to my mind the full conviction that the person I had seen in the Supreme Court was the young Rajah I had formerly known. The sight of the prisoner yesterday did not strengthen that impression, as I had a perfect recollection of his features. The marks on the prisoner's person resemble those which I formerly saw on the person of the Rajah, although in a fainter form. Those marks are connected with the circumstances I alluded to in a former part of my deposition. This interview, which I have just had for the purpose of looking at the marks, has decidely strengthened my conviction. I would say decidedly so far as I would, after such a lapse of time, that this person is the Rajah. I have seen the picture which was exhibited in the Magistrate's cutcherry. Presuming that that picture was drawn for him when he was about 18 or 20 years of age, I consider it a most happy likeness of him as he then was, retaining a striking resemblance still to the prisoner at the bar.

Cross examined by Mr. Bignell.—The nose of the young Rajah was then rather fuller and smoother and the outline not so distinct as at present. It was slightly acquiline. I have no recollection of the colour of his eyes further than that they were dark. I cannot speak to shades. I considered him above the middle prize, decidedly tall for a native. When I saw the prisoner I knew that he claimed to be Rajah of Burdwan, but I had no idea that it was that Rajah whom I had seen at Chinsurah. I cannot say that I considered the prisoner to be an imposter until yesterday morning because that opinion had been shaken by what I had seen in the public papers. The conversation with Mr. Overbeck is not the main ground of my belief, it is the facts which that conversation recalled to my memory.

Paul Christian deposed.—I have for the last six years been a resident of

Kishenagur, but formerly I resided in the district of Burdwan. I recognize Sham Lal's son Kisto Lal, and the Rajah of Hurdhun. In the month of December 1835, I went to the residence of the Rev. Mr. Kraukenberg at Kishenagur, and we went to preach the Gospel to the residents of that town, where we Sham Lal standing in the verandah of his house. After a short conversation with the clergyman, Sham Lal introduced us, in a small room, to his son Kisto Lal, and requested us to converse with him, and we there had an argument with Kisto Lal on various religious topics. The next day we repeated our visit accompanied by Mohesh Pandit, and renewed our theological arguments. During the controversy Kisto Lal frequently interrupted it by indecent bursts of laughter. Mohes Pundit told Kisto Lal that he believed he had seen him previously. Kisto Lal replied:—May be, when this soul inhabited another body." Hearing this reply the clergyman remarked to me in English, this man appears to be an imposter, and has no fixed notion of religion, it is needless conversing with him. After this the clergyman ceased to visit him during the months of December 1833, and January 1834. I on various occasions have seen him seven times at Kishenagur and saw him in company with Mohesh Pundit. When he was in the Jail at Hooghly, I was directed to see and recognise him by the clergyman. I did not then wish to expose him, and therefore when questioned by Mr. Walters, the Commissioner, after my interview with the prisoner, I requested ten day's time to consider and give my reply to his and Dr. Wise's queries regarding the identity of the prisoner; but I even then told them that I believed him to be Kisto Lal; but I could not then speak positively on that subject. The prisoner was lying on a cot. He was then thin and emaciated, and had a beard and long hair tied up in a knot behind his head, and his dress was likewise different from what it is now. In consequence of Mr. Kraukenberg been enabled to recognise the prisoner as Kisto Lal by the tie of his hair, prisoner refused to tie it in a knot in my presence. I spoke to him and advised him to desist from persisting in this imposture. This was in 1836. After my return to Kishenagur, the Rev. Mr, Deare requested Sham Lal to send for his son Kisto Lal, and he would get him a situation in the zilla court; but the Gossain replied that Kisto Lal had gone to the village of Maudi to collect some money, and said "go and search for him there." When I heard this, I replied, there is no necessary of searching for Kisto Lal across the Pudda River, for he is in confinement in the jail of Zilla Hooghly. After this I wrote to Dr. Wise a letter informing him that if he wished to be satisfied of the identity of the prisoner with Kisto Lal, if he would send their travelling expenses, there were many residents at Kishenagur who had been acquainted with Kisto Lal and could proceed to Hooghly and recognise his. To this letter I received no reply. From the time I ceased my visits to Kisto Lal in January 1834. I neither saw nor heard of him, until I saw him in the zilla jail of Hooghly in 1836. I saw his father Sham Lal in 1835, at the house of an Indigo planter. His son was not then with him. Mr. Kraukenburg is not now residing within the East India Company's territories. I have no doubt that the prisoner is Kisto Lal, he is so exactly like him. If it were possible for two persons to be the exact resemblance of each other, then there may be a doubt not otherwise.

Questioned by Mr. Graham. I did not see yesterday evening Menik Sing, I saw the Shristadar Munsaram on the road, and questioned him regarding the payment of my expenses in coming as an evidence in this case. He referred me to the Sessions Judge. The appearance of Rajah Pertab Chunder at Bancoorah was a common rumour amongst the vulgar people: I took no notice of it. I neither know whether the pseudo Rajah was arrested at Bancoorah or that Purran Baboo wrote to the Revd. Mr. Deare to come and see the prisoner, his expenses being paid to him, nor did Puran Baboo

make me any similar offer.

This witness claimed 11 rupees as his travelling expenses, and the Sessions Judge allowed him 10 rupees in this case.

Ramchunder Mitter, Mohorir, in the collectorate department of Burdwan, deposed, I reside in the village of Jomalpoor, zilla Burdwan. I recognise Kisto Lal the son of Sham Lal, *alias*, Shamanund Gossain. Shamanund used often to come to my house, at Tailmarree, in Burdwan, and put up there or 10 days at a time. He was my family priest. In the year 1237 B.S. Kisto Lal quarrelled with his father, and came and resided for 2 or 3 months at my house. In 1241 B.S. Kisto Lal again visited me at Tailmarree. During the first visit he was a candidate for employment under Government, but at the latter he had assumed the habits of a sacerdotal character. He on that occasion resided 15 days in my house. Subsequently in 1242. I saw him in Cunchenagur. At that time, he resided in the house of Komul Raur, and many persons came to see him, and said the young Rajah is returned. I never contradicted this rumour, I advised him to desatt from this imposture, otherwise he would get into trouble; but he paid no attention to this counsel. I gave no contradiction to the rumour, because if I had done so, I would have been taken before the authorities, and my depositions taken, and an order passed on it. I only mentioned the circumstance to my brother. My brother likewise saw the prisoner when he visited me in 1237 B.S., and 1241 B.S. My brother still reside in Burdwan, his name is Jugget Mitter, and he has not been subpœnaed in this case. When the prisoner was at Komul Raur's I did not see any person attending on him.

Questioned by Mr. Graham.—It was a little previous to the Doorgah Pooja, that the prisoner was at Cunchenagar, in his assumed character of Pertab Chunder. He was never in circumstances to be able to engage my brother's service. Gour Lal was younger and shorter than the prisoner; but he resembled him very much; he was rather sun burnt. I have no recollection as to whether he was pock-marked or not. Kisto Lal had ten toes and ten fingers.

Deenonath Gangoly, deposed. I reside at Sreekaunth in zilla Burdwan. I know this man, (pointing to the pseudo Rajah) but I do not know his name. I saw him in Doorga Mundel during the month of Assar four or five years ago, dressed as an ascetic in the house of Doorga Doss Mundel, for some days. Doorga Doss Mundel died in Kartick last. Another ascetic accompanied the prisoner to Sreekaunth, and Prawnkissen waited on him there, Prawnkissen had three names. He called himself at Bancoorah Kerpahnund and Ghasseeram. I am certain that this prisoner is the Gossain. I saw him at Sreekaunth four years ago; but I do not know his name. I never went with Kerpanund to Kishenagur. The Choota Gossain had different features from the prisoner. Prawnkissen invariably accompanied the minor ascetic to Doorga Mundel's house. I never saw either of the two Goossains drink and intoxicating liquor.

Questioned by Mr. Bignell. I never heard these Gossains' names at Sreekaunth. They went under the appellation of the Burra and Chota Gossains.

Questioned by Mr. Graham. I do not know from whence the prisoner came to Sreekaunth, Sooroop Narain Deo. The Chota Gossain was handsomer than the prisoner, and was shorter.

Sham Hograh deposed. I a resident of Sreekaunth, where I was the pseudo Rajah residing as a Gossain four or five years ago, in the house of Doorga Mundel. I never heard his name. Seven months previous to this Gossain's arrival, another Gossain had come and resided for some days. I know Prawnkissen. I did not see him with the Gossain that came first to the house of Doorga Mundel, but he used to attend on the Chota Gossain.

Questioned by Mr. Graham. Prawn was at Sreekaunth when the prisoner was there. I do not know the prisoner's name, or who he is.

Assad Ullee nazir of Zillah Burdwan, deposed. I recognize the *soi disant* Pertab Chunder the Rajah of Burdun, Hafiz Futteh Ollah, Radakiseen Ghosaul and the other prisoners in this case. I first saw the *pseudo* Rajah in April last at Culna. The darogah of Culna having, in Bysack last, reported to the Burdwan Magistrate the arrival of the *soi disant* Rajah at that town; and having further added, that this Rajah intended to have landed with an armed retinue at Katty Khal, and that he had dissuaded him from it, the Magistrate thereupon dispatched at two different times, two jemadars with some hired burkundauzes to prevent this Rajah from landing with his followers; subsequently the darogah dispatched another report to the Magistrate, that the pretended Rajah had landed near the burial ground of the Burdwan Rajah, and followed by a drunken mob all armed; and this Rajah had ordered his adherents to seize the muskets of the sepoys on guard at the burying ground, and it was with the greatest difficulty that I dissuaded him from it. The Magistrate, on receipt of this report, dispatched me on the 29th April to Burdwan, to disperse this Rajah's assembly and to arrest him and take him prisoner to Hooghly. I arrived there the next day, and saw only the naib darogah, the moonshy and a peon on guard; and having heard that the darogah had gone to see the *soi disant* Rajah, I sent information to him of my arrival and he came. I enquired of him whether the assemblage had dispersed, and he replied in the negative. I then gave the darogah's purwannah to him, and desired him to accompany me to the Rajah, to disperse the Rajah's party. I saw several boats moored to the shore and 30 or 40 boats and the Rajah's budgerow at anchor in the stream. I desired the daroga to go and give the Rajah notice of my arrival. The darogah then called Futteh Ollah, the darogah, and Mirza Hossanee, the petition presenter of the Rajah, and requested them to communicate to the Rajah my arrival and wish to see him. They replied, the Rajah is not at leisure to see you at present, and advised me in the interim to go to the Hurdun Rajah boat and see him; and I did so, and informed the Hurdun Rajah the reason of my coming, and explained to him the purport of my purwannah. The Hurdun Rajah spoke a great deal about this *pseudo* Rajah being the real Rajah, and the probability of his soon seating himself on the Burdwan guddy. I replied, I have no interest in this matter, all that I have to do is to disperse the assembly. The Hurdun Rajah then left me in his budgerow and proceeded to the *pseudo* Rajah's budgerow, and shortly afterwards one of their domestics called me to come on board this Rajah's budgerow. I then proceeded, accompanied by the zemadar and a few armed burkundauzes. The men on guard at the Rajah's, informed us that we could not go on board thus armed; but that I and the darogah, with 2 or 3 others, may come unarmed and communicate our message. In compliance with this request, I and the nazir, accompanied by 2 or 3 peons, went on board. I gave the purwannah to the Rajah and he looked at it and Monshy Hurrochunder read its contents to him; after which I told the Rajah that it is necessary for him to disperse his retinue. The Rajah replied they are not a mob, but my domestic and indispensable servants. I replied, be that as it may, you should not keep so many persons about you. This Rajah replied, I wish to go to Burdwan. I said if you desire to proceed to Burdwan, discharge this concourse, keep a few necessary servants, and I will see you safely attended; then on his objecting to go with so few servants to Burdwan, I counselled him, in compliance with the purwannah, to return to Hooghly and I would accompany him there. He replied my attorney, Mr. Shaw, is arrived; I will see him during the day and give you in the evening a final reply to your orders. I then returned home and as I imagined from the obstinate and overbearing conduct of the Rajah and his rabble, that they would not disperse, I reported this conversation,

and the state of the affairs at Culna to the Magistrate, and began to investigate into the correctness of the statement of the Rajah having landed at Culna with an armed force, and the general conduct on shore; and having ascertained the correctness of the darogah's report on that subject and dispatched it to the Magistrate. Towards the evening, although I despaired of dispersing this Rajah's men, yet, that the Rajah may not have cause to say that I had failed to call for his reply, as he had desired me, I went to the ghat and desired the darogah to go on board; and if the Rajah should show any dispositions to disperse, let me know. Some delay having occurred in the darogahs returning, I, after dusk, returned to the thana, after having desired a person to call him. Soon after my arrival at the thana, the darogah and the police peons came. I enquired of the darogah what reply the Rajah gave him. He said that Mr. Shaw, on behalf of the Rajah, had told him that the Rajah was proceeding to Burdwan with the sanction of the Governor-General in Council and he would go there with his whole retinue. I then sent another report to the Magistrate, informing him of my inability to disperse this concourse; and this report I dispatched by horse dak. This was the 30th April, and the Magistrate arrived on the night of the 12th May at the thana, with the military and the civil surgeon and awoke me and inquired how matters stood? I said in *statu quo*, and showed him the Rajah's boat; and I took the gentlemen to the residence of Mr. Alexander and, by the Magistrate's desire, stationed persons on the road to give intimation of the arrival of the soldiery. During the night, the officers retired and slept with their companies, I in my palkie, and the Magistrate and Doctor at Mr. Alexander's. Early next morning, before day-break, we proceeded and woke the military and roused them on the banks of the river, and pointed out the Rajah's boats to the Magistrate. The firing then took place and the men were captured. I took out a gold hilted sword from under the Rajah's pillow, and the other arms were found by me on searching the other boats.

Cross-examined by Mr. Shaw.—I on that evening received two letters from the Rajah, written in Persian. The Rajah had brought 11 concubines with him, and there were 7 in his budgerow at the time. I found the sword under the Rajah's pillow. There was no riot in Culna, from the time of my arrival till the dispersion of the assemblage. I never told Mr. Shaw that the daroga's reports were all false. Rada Kissen Ghosaul presented a petition to the Magistrate of Burdwan, previous to my departure from Burdwan. When I was going I heard a popular rumour at Burdwan, that neither the Rajah of Burdwan nor the Nabob of Moorshedabad are dead, but they have become ascetics, and are wandering over the country. The robacarry written by Takoor Ally, was engrossed from rough drafts after the Magistrate's return to Burdwan.

Govind Sing, Jemadar, deposed. The witness corroborated the evidence of Mayboonala, late the deroga of Culna, and of Assed Ally, the nazir of Burdwan regarding the transactions which occurred at Culna during the stay of the pseudo Rajah at that place.

Dusserut Puttuck deposed like the former witnesses, in confirmation of the transactions which occurred at Culna during the period the *soi-disant* Rajah was anchored off that town.

Hurrochunder was brought up from the jail. It appeared that he was connected with the charge against these prisoners, and is to get his release from the jail on this charge, provided he spoke the truth.

Mr. Bignell said, that he had no charge at present against him, but if he perjured himself he would have; and the Zillah Magistrate said, that the written agreement with the man is in conformity to the existing regulations in this country and if he does not depose to the truth in this case, he can be sent back to jail,

and recommitted on the present charge.

This witness deposed. I know all the prisoners. I was the Secretary to the soi-desant Rajah and wrote his letters for him by his dictation. Letter No. 1 is signed by Bucktawur Sing, the nazir of this Raja, who wrote the contents of it I don't know No. 2 is signed by the Rajah, who wrote the body I do not know. No. 3 was written by me, and signed by this Raja. It is addressed to Muddu Soodun Nundy, desiring him to meet the Raja at Ambeeka. I cannot say whether it was ever dispatched or not. No. 4 is likewise signed by the Raja, and written by me to the Nazir Asood Oodeen, appointing him the Jemadar of the female household, the salary to be settled on his being installed as the Raja of Burdwan. No. 5 is a list of names. It is not signed, and who wrote it I cannot say. On re-examining it, he said, it is signed in Nagree which I cannot read. No. 6 is missing No. 7 is a petition from Assood Ally; who wrote it I know not. The next No. is 15, and it is a draft of a letter written by me, to Matab Chunder, at the dictation of this Raja. There was a letter copied from this, addressed to Matab Chunder at Goya, but as it could not find Matab Chunder there it was return ed. Another draft by me, written to Matab Chunder, is a letter complaining of his arrival at Burwan, and his fears of Baboo Prawn, and that he has employed persons for his protection; and that his case regarding the Rajaship of Burdwan was to be tried in the Supreme Court of Calcutta. No. 17 is signed by this Raja; who wrote the body of it I cannot say. It is addressed to Thakoor Ghosal, desiring him to attend to the Rajah's business as a salaried person at Hooghly, and after the Raja would succeed to his guddee, would appoint him daroga of the Rajbarry at Ambeeka. No. 18 is missing, No. 19 is not written by me, and bears no signature. No. 20 is an unsigned memorandum written by me of the arrival of 200 guests of the Rajah to play the hoolee. No. 22 is written by me; it is a memorandum not read of the arrival of the kettle drums and flags. The next is not numbered, and is an order to Ram Chunder to come and attend to his duty within seven days, and Seboo Jemadar, to entertain 100 sepoys to attend the Raja's train at Ambica, and to accompany him to Burdwan. Two letters, signed by the soi-disant Raja to the address of Poybit Raja were admitted.

Cross-examined by Mr. Shaw.—I was one year in the *soi disant* Rajah's service. I was with him all the time he was moored off Culna. There was no disturbance caused by him there. When the darogah explained to the Rajah the purwana for him to disperse his rabble, the Rajah replied, I have no unnecessary attendants about me, but only my domestics, who have accompanied me from Calcutta. Report this reply of mine to the Burwan Magistrate, and let me know his order on this representation. The nazir arrived after this and the darogah accompanied him to the Rajah's boat, and shewed to him the purwanna to disperse the illegal assemblage. On that evening the daroga went again, unattended on board the Rajah's boat, and he did not appear to be alarmed. There were two burkundazes with him, who stayed out whilst the darogah went to the Rajah's room. The darogah never attempted to apprehend the Rajah, Mr. Shaw, on this occasion, sent for the nazir; but he did not come. There was no purwana read that evening. Mr. Shaw dictated a letter to the nazir signed by the Rajah, requesting him to mention how many persons he was to disperse. I wrote it in Persian. Pertaub told the darogah I am come, send for the nazir, and let him explain his purwanna to me, and then I will take measures to comply with its purport. The Rajah had the same servants with him at Culna that he had at Calcutta. Some of the shopkeepers and others of Culna, used occasionally to wait on the Rajah with presents; the only respectable person that came to see the Rajah, was the Hurdun Rajah. The *pseudo*

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Rajah had presented a petition to Government to be permitted to proceed to Burdwan to be recognized, and from the evidence refused; but a letter was dispatched to the Magistrate to see that no collision took place between, the *pseudo* Rajah's and Prawn Baboo's men. I do know Mr. Graham, the attorney of the Supreme Court. He had promised the Rajah to accompany him to Burdwan He is a very good man, and had no wish to quarrel with any person. This Rajah had 60 or 70 burkundazes; they formed his guard and sentinels at his house, offices, and boats at Calcutta, accompanied him from thence to Culna. The Rajah had 1 pinan, 9 budgerows, and 2 or 3 bholeas and 304 boats. There was in one of the boats, the music and the kettledrums on another. One was a Baitakhanah and the other the abdorkhona, a fourth the cookroom, and the sleeping bugerow was separate from the audience boat. The burkundazes were employed in guarding these boats. I was for a few days in the criminal jail after my arrival from Burdwan, but since I have become a Government witness, I have been * * * * * * * were some the Rajah's servants and some merely candidates for services. I was 8 or 9 days in the criminal jail. I was arrested on the 21st Bysuck last. I was 10 days released on bailee and then remanded to custody. My bailee did not render up his bail. I do not know whether my bail has been released from his liability on my account. I did not commit any fresh crime during the time I was out on bail. I had a subpoena served on me from the Supreme Court. I waited on the Magistrate to inform him of it, and the Magistrate then said, you are a Government, witness, you must remain confined in the civil jail. My bail bond was not returned to me. I was sent down by the Joint Magistrate in custody of 2 peons to Calcutta. The Rajah is a peaceable and noble looking man. Mr. Bignell remarked that this was irrelevant to the case. Mr. Curtis concurred in this opinion. Mr. Shaw replied that he only wished to show how the prosecution got their witnesses, but if the Judge objected he would continue it.

Cross-examined by Mr. Bignell. The Rajah wrote to the darogah that he had 350 men with him at Culna. He did not discharge any of them, because he waited for the Magistrate's reply to his letter, which he had requested the Daroga to forward to him.

Mr. Shaw, when Mr. Bignell was about to file the documents found in the Rajah's boat, said he opined that if Mr. Bignell filed these he ought to file them all. Mr. Bignell replied that he would file those he thought favourable to his case, but they were all acceptable, and if Mr. Shaw wished he could apply for and file the others.

When this witness had concluded his testimony, the Judge ordered him to be released.

Anoopchunder Dutt, resident of Sreekaunth, deposed. I recollect having seen the *soi disant* Rajah three or four years ago at the house of Doorga Mundel Doss in Assaur or Srabon. He was then in the dress of a Gossain. I do not know his name; but I have subsequently heard that he is called Pertab Chunder. I saw him once or twice at Sreekaunth. I know Kirpanund, alias Prawnkissen. He has become insane and embraced Christianity. He was at Sreekaunth when prisoner was there. Prisoner only came once to my village. In the other Prawnkissen waited on the Chota Gossain, who was fairer and about the same height as this prisoner. Prawnkissen did not accompany that Gossain to Sreekaunth; but in consequence of his having performed a miraculous cure on Doorga Mundel, Prawn became his disciple. I do not know the name of either of the Gossains, or from whence they come, or where they intended to go. About seven days after the departure of the prisoner, the inhabitants of Sreekaunth bruited about that "the Burra Gossain, who had resided at Doorga Mundel's, was the young Rajah of Burdwan. On my inquiry of Doorga Mundel who this Gos-

sain was, he said I need not tell you now who he is, you will know that in a few days; and I guessed from this reply that he was some great personage.

Solochurn Buttachar, resident of Sreekaunth, deposed. I am a Bramun beggar. I know the principal person, his name is Gossain. He was in Doorga Mundel's house, about four years ago in Assar for 12 days. Kripanund was with him, during his stay at Sreekaunth. I saw him three or four times. The inhabitants of the village mobbed together and threw stones at him to turn him out of the village and pelted him with mud, because he was a magician. The magician then went to Burdwan, about 20 days after his departure, there was a rumour in the village that he was changed to Rajah Pertab Chunder of Burdwan. Kirpanund did not accompany him. I never heard from whence this Gossain had come. Some months previous to this Gossain's coming, another, taller than him, came to Sreekaunth, about six or seven days after the Chota Gossain's arrival, called on him at Doorga Mundel's dwelling.

In consequence of the Sessions Judge's language to the prisoner on Wednesday last, during the hearing of his case, Mr Shaw has declined any further attendance on his behalf in this Court professionally.

Mr. Shaw has, we learn, been interdicted from visiting the prisoner in jail.

William James Deere, Clergyman, resident of Kishenagur, deposed. I have seen the prisoner on a former occasion here, in the Magistrate's Court. I went to Kishenagur in 1832, from Burdwan. I knew Kisto Lal Brumacharee. My acquaintance with him commenced in 1832 at Kishenagur. If not altered much within these six years, I think I could recognize him. I saw him last in 1832. I cannot say decidedly whether the prisoner is that Kisto Lal or not. In my former deposition I stated that my impression was that he was not, but I could not swear that he was not. The prisoner is of the same stature, and his nose of the same formation, only Kisto Lal's pointed upwards and the prisoner's downwards. His eyes are of the same color. Kisto Lal had a fine, broad, open chest and shoulders. In 1832 and 1833 I was in Europe and returned to India in 1835. When the prisoner in 1836 was forwarded from Bancoorah to Hooghly, two men, who represented themselves to be Purran Baboo's servants, requested me to go to Hooghly and recognize the prisoner as Kisto Lal. They promised to pay my expenses. I declined to interfere personally, but offered to give them all the information in my power. These men never returned, but two men who pretended to be Purran Baboo's people came, but they appeared to be spies. Purran Baboo is the present Burdwan Rajah's father. I heard in 1821 bazar reports that Pertab Chand left his country to go to Runjeet Singh to form a conspiracy against the British Government. Ramdhon Catechist lived with me when Kisto Lal visited me. I have a good opinion of Ramdhon. I know Mohesh Pundit.

Mr. Leith asked witness's opinion of Mohesh Pundit. Mr. Bignell objected to the question, and Mr. Leith waived it.

Witness deposed, I once had Mohes Pundit in the Court of Burdwan for a defamation of character. I would believe him on his oath on a matter which I knew to be true, otherwise I would take his deposition into consideration before I credited it. He would never be employed as a Catechist. Mohes Pundit is not now with me. He left me in 1833.

Examined by Mr. Bignell.—I received a letter from Shaw. I sought no damages from Mohes Pundit in my suit against him. I subsequently forgave him and re-employed him in the school. My impression as to the prisoner's identity is the same as it was, when I deposed before the Magistrate. I cannot speak positively on that point.

Re-examined by Mr. Leith. The letter from Mr. Shaw I received within these eight weeks, and I have destroyed it because I dreaded being entangled with attornies. The letter advised me to ascertain the marks on Kisto Lal's body

and the time of his disappearance, and it disapproved of certain proceedings in the prisoner's case, and added, that he would report it to Lord Brougham. The letter did not offer me any remuneration for my expences, nor did it call on me to attend as a witness in the case. Here is the bill for my expences.

Daniel Antoneo Overbeck deposed. I have already deposed that I could not recognize the prisoner to be Rajah Pertab Chund. I never met Pertab Chand in the plight and apparel as I did the prisoner two years ago in the Hooghly Jail. I never saw Pertab in Jail, and I always met him apparelled as a native prince. I was formerly Governor of Chinsurah, and in 1826 I was one of the Commissioners appointed by the Netherlands Government to deliver Chinsurah over to the English. About 18 months previous to my being examined before the Magistrate, I, at Doctor Wise's request, saw the prisoner in the Hooghly Jail. I at first considered him to be an imposter; but when I took him a little aside from the other gentlemen, I told him by way of threatening him that he could not very easily deceive me as I was acquainted with all the marks which Pertab Chund had on his body; and though he at first was very much abashed, he brightened up directly, and answered, all these marks are mine. There was a slight mark behind Pertab Chund's right ear, occasioned by the little glased string of a kite. He had a mark on his back between the shoulder occasioned by the bite of a vicious horse. His coachman Peter Emmer, Neemoo and Sydoo, will be better able to particularise it. He also had a mark on his knee, of which Dr. Halliday could give the history; a mark on the upper part of his left hand, occasioned by a scald received in some foolish love affair, and some other trifling marks, which are cause of my examination I may recollect. I have not seen these marks on prisoner, as I had no occasion to examine him in the Jail. I requested permission to examine him in the Magistrate's Court, but both Mr. Samuells and Mr. Leith disagreed with me on this point and objected to it. Mr. Leith said that when I would be examined before the Sessions Judge on this point, then I could inspect his body. I have not as yet examined the prisoner's body. I had many opportunities of seeing Pertab Chund. He visited me frequently. The mark which I saw on Pertab Chund's hand, I would be able to recognize. It was of the size of an eight anna piece. The other I know by the accurate descriptions I have heard of them many years ago from several persons.

Here the witness and Mr. Leith, requested to examine the prisoner, and the permission to examine, was granted to him in an adjoining room, accompanied by Mr. Bignell, Mr. Leith, and Mr. Graham. They retired for about half an hour, and then returned and deposed.

I have traced the contour of the prisoner's face in the picture which was shown me as the picture of Rajah Pertab Chund, I have traced all the marks, which Pertab Chund had on his body, and by examining the prisoner closely in the presence of the Counsels, for the prosecution and the defence, he has answered every question whicht I put to him of days past satisfactorily, without any hesitation; consequently, to the best of my belief, the prisoner is Rajah Pertab Chund. He gave a description of the interior of the Rajbarry at Chinsurah, and he answered as well as could be expected after 20 years. He likewise answered, with like correctness respecting the interior of my house and the manner of his reception there and described the persons of Mr. Van Bradun, and my son. The house in which I lived when Pertab Chund visited me, and respecting which I questioned him, was broken down in 1827, and the barracks were subsequently erected on the spot. The questions were calculated to satisfy me as to his identity—he could not otherwise have described it. The floor, the furniture and one of the pictures, described by him, were sold in 1825. The floor was boarded and painted all over with wreaths, and flowers. It was a very

large room. I heard of Rajah Pertab Chund's sickness, and death. Shortly afterwards I heard that he was alive and had absconded. I made particular inquiries and learnt that at sunset he took a bowl of broth; he was in the evening taken out in a palkee into a tent near the river, surrounded by kunnuts, and attended by his servants. At night he was suddenly missed, and Prawn Baboo searched for his body, and he had the Ganges dragged for the body ineffectually; and then the persons reported to Rajah Tej Chunder that his son was glorified. He ordered his funeral ceremonies. A trunk was subsequently brought filled with shells, and burnt on the pyre, and the ashes were collected and carried to Ambeeka. The report was, I believe, very general. His servants were, I think, Musselmans, I do not know their names. Major Marshall was an Ensign in the 20th N.I. in 1814. He was often here and was a visitor of mine, and he might have seen Raja Pertab Chund. Pertab was generally called the Young Raja of Burdwan. Wallee Mohomed, the Nazeer of the Fouzdary Court at Hooghly, was then in my service. Ram Nurrain Surdal, a writer in the Sudder Dewany at Calcutta, was my writer and John Anthony Pootoo and Choochal, now in my service, were then in my employ. One of Pertab's upper front teeth projected slightly. In the left side of the right eye of Pertab Chund, there was a slight mark of a mahogany color, only observable when Pertab Chund elevated his eye. This mark exists in the prisoner's eye, but it is a little faded.

Cross-examined by Mr. Bignell. I hear that now they will not admit any person into the Rajbarry at Chinsurah. There was no similar name nor room in Chinsurah like the house in which I lived when I saw Pertab Chund. Sometimes large parties used to be given there, and many people used to go there. It is not impossible that a person, by making enquiries, might have ascertained the furniture of the old Dutch Government house but who is there living here that could give any information regarding it except Mr. Herkelots and his family, with the exception of some of the old native servants. I saw the mark behind the prisoner's ear, but it is very faint. I have never seen a similar mark in any prisoner's eye. The report of the escape of Pertab Chund was merely a rumour, if it was not an idle one, before 1832, the year of that Raja Tej Chunder died. One of the Government Agents reported to Government, that a person who had reported himself to be Raja Pertab Chund, was living at the place of his Residence. The Government, through one of their Secretaries, intimated this communication to Raja Tej Chunder, and Raja Tej Chunder replied, that he had never seen the corpse of his son, but that Purran Baboo and Bussunt Baboo had reported the death of his son to him. The truth of this statement can be ascertained by a reference to the Government archieves of those days. I have been 52 years in India, and I have not seen' or heard the body of a Khetree being burnt in a chest. If it were done it must be done for the purpose of deceit. I would never mistake a chest for a corpse.

Harriett Keating deposed.—I am a married lady, residing at Calcutta. I am a daughter of the late Mr. John Athanass. My father was the proprietor of great many houses in Calcutta. I recollect Raja Pertab Chund of Burdwan. I frequently saw him in Calcutta. I saw him in 1816. He was then residing in my father's house, No. 19, Park Street. I was then residing in No. 1, Gooreahmah's Lane, my father's residence. I was then verging on my 16th year. I used to see him from an adjoining house of my father. We used to be in that house every evening, accompanied by my sister and my father. My sister's name is Sophia Crane. I have a distinct recollection of the features and appearance of Raja Pertab Chund. I have seen the prisoner at his house, near the Fouzdary Balakhana, during last year, accompanied by Mr. A. DeSouza, of the firm of DeSouza and Co. and Dr. Charles Pearce.

I visited him to put questions to him with the view of identifying him with Raja Pertab Chund. I did question him and all his replies were satisfactory with the exception of two unimportant ones. There were no persons present who could have suggested the answer to the prisoner nor did I mention the questions to any person but Mrs. Crane, who joined me in questioning the prisoner. I saw him three months previous to this interview at my house. He came to be identified. I saw him through the venetians of an adjoining room, and in consequence, I returned his visit. From what I had seen of the prisoner and from the result of the replies to my questions, I believe him to be Raja Pertab Chund. Pertab Chund wore his hair a little above his shoulder and much frizzed out. I recollect the Raja's features. I do not recollect each individual feature so particularly as to speak of them separately. My father died on the 31st September 1835, his sircar may be able to identify the Raja. Mr. Antony DeSouza did know Pertab Chund, but Dr. Pearce did not.

Questioned by Mr. Bignell. I was never in the same house with Raja Pertab Chund. I do not understand what a bird's eye view means. I some time saw him for a whole day together. He used to give parties, and the attention paid by him to his guests induced me to look at him. I was never his guest. The guests used to assemble in the hall of that house. That was not the only opportunity I had of seeing him. I have several times seen him sitting in his verada smoking. The questions I put to the prisoner were regarding what my sister had observed to transpire in my presence. Neither my sister nor I mentioned these circumstances to any other person. My sister and I had agreed not to divulge these matters to any person. The questions and the answers were written by Mr. A. DeSouza, who is a witness on this case, and they are here in my boats. They heard of his being in distress, and termed an imposter. I wished to see and identify him.

Re-examined by Mr. Leith. I used to see Pertab Chund and ride out in his carriage. There were many particular circumstances in Raja Pertab's manner to attract my notice. Prisoner described me and other persons very correctly. My father died, leaving considerable property, and a great part of it will descend to me.

Questioned by Mr. Bignell. The estate is in the Registrar's hands. Mr. Dickens married my niece, and is administrator to the estate.

Sophia Crane, sister to the last deponent, deposed in corroboration of the evidence of her sister almost *verbatim*, and in fact to publish it would be but the repitition of the testimony of the deposition of her sister. In consequence of this fact, Mr. Bignell declined to cross-examine her, with the exception of one or two unimportant ones, and he took no notice of these witnesses' evidence.

Dr. Robert Scott's examination continued.—Questioned by Mr. Bignell. My eye-sight is not so good as it was, but still I can see clearly with glasses, occasionally in examining minute objects. I have a pair now of extra magnifying power and this precludes my using two pair of spectacles. When I saw the prisoner in jail, I had my usual spectacles on, and only one pair. I first arrived in Bengal in 1815. I came out as Doctor's mate in the Ship *Lady Castlereagh*. I became so intimate with the young Raja during my stay at Burdwan, as he spoke the English, and I did not then know the native languages, and I associated more with him than the other natives. I visited him at all hours with the exception after midnight. The Raja was very sociable.

During the examination, Mr. Bignell put questions as to whether he saw scenes of drunkenness and obscenity, and went even so far as to ask whether the witness's character was notorious up to the present day for curing venerial complaints at Burdwan. Witness answered no.

Mr. Leith objected to these questions. He said, that they were irrelevant to the

case in question, and tended to disparage the witness's character and that is a sufficient guarantee of his character.

Mr. Bignell, replies that he had his instructions from Government, and to them only he was responsible for his conduct in the case.

Mr. Leith then submitted the objection to the Judge, and he coinciding in opinion with Mr. Leith, Mr. Bignell therefore discontinued this line of procedure.

Examination of Dr. Scott continued.—I was at a nautch given by Pertab Chund. I saw Mr. J. Martin, the Judge, and his family, and Captain Webber, the Commandant of the Provincial Battalion, at the Rajbarry. I am not aware that amongst the papers seized by the Burdwan Magistrate at Culna when the prisoner was arrested, a sketch of the Rajbarry at Burdwan was found. The questions which I put to the prisoner when I saw him in the jail, and his replies to them, are these. I asked him whether he recollected me and if he recollected any of particular pursuits in those days. His answer was, that he perfectly recollected me, and that I was very fond of shooting pariah dogs with a pistol. The next question was whether he had left of his habit of drinking Madeira wine. His reply was that he had discontinued drinking wines, but he liked brandy much better. I then asked him about his coachman, who drove his four in hand carriage. He replied, the man is dead. I asked him what had become of the Rajbarry at Chinsurah. The reply to which was not very satisfactory. I then asked him about the sore in his mouth, the particulars of which I have already deposed to. I then questioned him regarding the Judges and Magistrates in those days at Burdwan. He could not name any of them with the exception of Mr. Martin, I then inquired of them whether he recollected any circumstances that took place at the Civil Jail at Burdwan. He replied that Ruggo Baboo who had been committed to that jail by Mr. Buller, had poisoned himself, and that I had opened and examine his body to ascertain the cause of his death, which reply was perfectly correct. These were all the material circumstance on which I questioned him. I am not a volunteer witness, I come in consequence of a subpœna from this Court, and if I had disobeyed that subpœna, I was afraid of being fined for contempt of Court. Before I received the subpœna, I did write to the prisoner's agent that I had been formerly a Surgeon at Burdwan, and that if I were to see the prisoner, I thought I would be able to identify whether the prisoner was the Burdwan Raja or not, as I was on very intimate terms with him whilst at Burdwan; but I did not sign my name to the letter, but sent it under an anonymous signature. I must distinctly deny that I have any prepossessions in the prisoner's favor, and I have no interest or bias for any party in this case. As people grow older they seem generally to grow shorter. Habitual intemperance if carried to a great extent, would affect the constitution and alter the delineations of the face; but some strong constitutions stand it out longer than others. The memory required to retain the remembrance of a language, learnt ungrammatically by mere colloquial conversation with the natives, is more liable to fade during two years of its discontinuance, than the remembrace of any striking event that has made a strong impression on the mind at the time it had occurred. I did attend Mr. Trower's family. I sent three doses of calomel to Mrs. Trower to give to her three children. She mixed them all up and gave them to the youngest, an infant, and returned the next day to Burdwan, and I believe the child died. Whether Mr. Trower recollects my having attended his family or has forgotten it, I cannot say. Mrs. Trower came from Hooghly to Burdwan for three or four days, and she it was who wrote to me to attend on the children, and perhaps Mr. Trower might not have been aware of this fact, and this may account for his denying that I attended his family. Otherwise I cannot account how Mr. Trower's memory has

faded on this point, and he has denied the fact.

Re-examined by Mr. Leith. I use the spectacles of the larger magnifying power, when I read or perform any Surgical operation. The spectacles which I wore when I examined the prisoner in the jail are perfectly sufficient for any ordinary purposes. When I knew the Raja at Burdwan I was a bachelor and about 24 years of age.

Mr. Bignell objected to Mr. Leith's re-examining the witness. He said, that the practice was unusual and contrary to the Mofussil practice, and he did not see the propriety of any Barister coming forward to upset those rules; and if so he may claim another re-examination after Mr. Leith has finished, and then there would be no end to this examination.

Mr. Leith replied, that it would be very unusual, as his, Mr. Leith's questions hear only on the replies elicited by Mr. Bignell on the cross-examination of the witness, and he certainly did not suppose, that Mr. Bignell, as the Government pleader, would make this objection when the object of Government ought to be to elicit the truth and not to make itself a party to the case.

Mr. Bignell replied, that he is the best judge of his conduct, and what are his instructions from Government on the subject.

Mr. Curtis remarked, that he could not well give a reply to the objection of Mr. Bignell. Vakeels are only admitted in the Mofussil Court in civil cases, as the admitting a mooktar on the prisoner's behalf is a departure from the general practice. He cannot comply with Mr. Bignell's objections.

Re-examination of Dr. Scott continued. The mark in the prisoner's cheek was of old standing. When I examined the prisoner in jail, it was in the cold weather I have not received my expenses for coming here, and intend to petition Government in the matter.

John Ridley, writer in the Secret and Political Department, deposed. I was formerly a writer in the Collectorate of Burdwan, during the years 1815, 16 and 17 and had opportunities of becoming acquainted with Raja Pertab Chund. The prisoner resembles him. I saw the prisoner at Calcutta and questioned him and his replies were satisfactory. I have been 28 years in Government employ. Fraser de Bordieux, Jack Clarmont, and Latour were in Pertab Chund's service. Peter Emmer went to Burdwan after I resigned my situation there, in consequence of obtaining a situation in the Marine Board at Calcutta, and I saw him at his residence in Park Street. From these visits I had sufficient opportunities to recollect his countenance. In May 1837, Mr. Graham requested me to visit the prisoner for the purpose of identification. My questions during that interview were of a nature to enable me to satisfy myself as to the prisoner's identify, and from his replies and appearance, I am quite positive that he is the real Raja Pertab Chund. I sold the Raja in 1819, a gold alarm watch. I asked the prisoner when I saw him in May 1837, whether I had sold him any articles, and he said that I had, and detailed to me the particulars of the sale.

Cross-examined. During the year, I went as an assistant to Mr. Tilman, Secretary to the Revenue Board, to the Upper Provinces. I am now a section writer and earn from 100 to 300 rupees a month. I was not on intimate terms with the Raja, but I went to visit his Christian assistants and used to see him occasionally then. The questions which I put to the prisoner were these. I asked him whether he recollected the dispute between his sepoys and the Provincial Battalion sepoys at Burdwan; he said he did. I asked him how it ended, he replied that an order was passed by the Revenue Board to allow his sepoys to wear uniforms of green color. This reply was correct. The next question was regarding the watch, and then I put to him several minor questions and his replies were correct. The sale of the watch was a ready money transaction and the Raja paid me 650 rupees for it.

Re-examined by Mr. Leith. I have

besides my daily earning, two houses in Calcutta.

A petition was put in by the prisoner's mookhtar stating that if the case was postponed until Wednesday next, the 26th instant, to enable Mr. Shaw to examine the witnesses that are subpœned on behalf of the defence, and see if he could not dispense with many of them whose testimony would be of no avail to the prisoner, and whose detention here would only incur an expense and inconvenience to the Government: and he contended that if this request were complied with, that this short postponement would eventually tend to shorten the case considerably, by getting rid of the testimony of several unnecessary witnesses.

Mr. Bignell remarked, that if the granting of the proposition would eventually tend to shorten the proceedings, he had no objection to the request being complied with.

Mr. Curtis remarked, that the only objection he could have to the petition, was a fear that the Nizamut Adawlut might suppose that he had postponed the case for his own convenience. He, however, in consideration that he could have yesterday taken up the examination of the witnesses of Hurry Narrain Roy, the Hurdhun Raja, five of whom are in attendance, and which examination and will perhaps take up the greater part of to-morrow, and that as Tuesday is a holiday, there would in granting the petition be already one day's postponement of the trial strictly speaking. He, therefore, on the petition being presented, complied with its prayer.

Mr. Leith stated, that Mr. Samuells has prohibited Mr. Shaw from taking any witness to the prisoner in the jail previous to their deposition being given in Court, unless some person connected with the jail was present. This, Mr. Leith stated, was a hardship; for when the witnesses for the prosecution were brought to see the prisoner in the jail, no notice was given to the defendant's attorney of their being taken there. Now it so happens, that in the case of the evidence of one of the witnesses for the prosecution, one of them had been handed over by the Government pleader to the Magistrate, on a charge of perjury, because the public officers who had accompanied him when he was taken to the jail to recognize the prisoner, could depose in the case against that witness, as to his having perjured himself; whereas in case where other witnesses had deviated from the truth, the defence could not prosecute them, because if they were to do so, they could have no evidence to produce but that of the amlahs who were Government servants; and of the prisoner, who could not legally be an evidence in his own case. Further as to the supposition of Mr. Samuell's, that if one of the Government amlahs were not present during the prisoner's interviews with the witnesses, they might be tampered, which he hoped that the character for respectability which Mr. Shaw and Mr. Graham have borne, will keep them from abetting any transaction of that nature which would ultimately be a stigmation on their character, if they were to do so, and besides, if that was all, that Mr. Samuells apprehended these witnesses could be equally well tampered with and tutored without seeing the prisoner and out of the jail is in the jail, and in a private interview with the prisoner; and that confining the witnesses on charges of perjury and the surveillence which they undergo before being examined before the Court, tends to deter many from coming forward and testifying to the truth, and thereby retards what he considers ought be the sole object of the prosecution, viz. the elucidation of the truth; he therefore move the Court to set aside Mr. Samuell's order and permit Mr. Shaw to take the witnesses to his client in jail, and let them communicate with them without the check of a Government functionary; for otherwise he was apprehensive that they might dread, meeting the same fate as the witness already confined on a charge of prejury has met.

The Judge replied, that he believed that the man alluded to by Mr. Leith

must be speedily liberated, as it did not appear to him that there was sufficient evidence to convict him. With regard to Mr. Shaw or Mr. Graham, he had not the least intention to throw a slur on their character, when he said that his setting aside Mr. Samuell's order, as requested by Mr. Leith, might possibly give ground to a report of tampering with and tutoring the witnesses for the defence; he therefore declined reversing it; but in the empty verandah of his Court, the prisoner was welcome, during the Court's Sittings, to see and speak with any of his witnesses in private for an hour or so, and whenever he would intimate his wish on that subject to Mr. Curtis, he would grant him permission to do so.

David Hare. I was acquainted with Rajah Pertap Chunder. I saw him six or seven times at his house at Chowringhee. I think the prisoner resembles the Rajah Pertap Chunder very much I have seen the picture in the room adjoining the Magistrate's Court. I examined him very minutely with it, and I traced a strong resemblance between the nose and eyes of the prisoner with those in the picture. Then from prisoner's reply to certain questions which I put to him at the jail, I verily believed him to be Rajah Pertap Chunder of Burdwan.

Rajah Khetter Mohun Sing of Bishenpore, said the prisioner is certainly and undoubtedly Rajah Pertap Chunder. About three years ago I sheltered him at my house at Bishenpore for 2 years. The Bankoora Magistrate, Mr. Elliott, abused me for succouring the prisoner, whom he termed an impostor and a vagabond, and he also threatened me with imprisonment in the event of my persisting in the same course.

Defence of Hurry Hur Narrain Ray, Raja of Hurdhun, one of the prisoners in the case of Government *versus* the *pseudo* Raja Pertab Chunder, &c.

Ram Chunder Chatterjee, gomasta resident of Moosunda zilla Nuddea, deposed. I know Raja Hury Hur Narain Ray, of Hurdhun. In Bysack last, about the 19th instant, I went to Culna, to search for a man who had run away with some of my money and after searching vainly for him all day as I was returning home, and my way to my village, I saw from the ghaut at Culna the Hurdhun Raja, seated on the top of a bowlea. I went to him and paid my respects to him, and I asked what had brought him to Culna. He replied, that he was proceeding to Kishnaghur, and he stopped for a day or two in the way to witness the miracle of a dead having come to life again. I asked him when he intended proceeding on his voyage. He replied to-day or to-morrow. I then took my leave and proceeded on my journey, and know nothing of the subsequent transaction which occurred there. The Raja had about 20 or 25 attendants with him, besides the boatmen. He generally travels about with a similar retinue. I am none out of employ.

Chunder Seekur Ray, resident of Annundopoor, zilla Nuddea deposed. I know Raja Hurry Hur Narain Ray of Hurdhun. I am his tenant. I saw him, on the 17th Bysack last, leaving his residence with a palkee and about 30 followers to proceed to Kishnaghur in a budgerow. On the 19th of that month I went to Culna, to ascertain the price of some mustard seed. I then learned that the Hurdhun Raja was there. I went on the 20th to see him in his boat and asked him what had detained him there. He said that he had stopped to see the miracle of a dead man having come to life, and said, "I will return to-morrow." I then took my leave and went home, and know nothing of the subsequent transactions that occurred there. The Hurdhun Raja always travels with a retinue of 30 or 40 persons.

Govind Ghose, milkman, a resident of Moosunda, zilla Nuddea, deposed, in confirmation of the evidence of the two former witnesses. There were two other witnesses in attendance to follow in the wake of these three witnesses, but neither the Sessions Judge nor the Mahomedan Law Officer considered it necessary to take further evidence on

this point.

After this had been intimated to these witnesses, the Hurdhun Raja expressed a wish to cross-examine the last witnesses, who then further deposed, that the Hurdhun Raja had never assembled any riotious mob, nor been guilty of a breach of peace, nor did he enlist any followers to forward them to the *pseudo* Pertab Chunder. In fact he never took any interest in his affairs and was a complete stranger to him, and in passing Culna on his way to Kishnagur, hearing that the man who had caused such a sensation in the country for the last two years by asserting himself to be Pertab Chunder, the late Raja and Zemindar of Burdwan, was at Culna, he had merely gone from motives of curiosity to see him.

Rannee Tootah Coomaree, the sister of the late Raja Tej Chunder of Burdwan. Rannee Peary Coomaree, the widow of Raja Pertab Chunder, and Beebee Badamee, his maternal aunt, have, in reply to their subpeœnas in this case on behalf of the defence, written that the death of Raja Pertab Chunder at Culna in 1227 B.S. is well known fact, and clear as the sun at mid-day, and that as they are women of respectability and *purdah-nushees*, they decline attending on their subpeœnas, as their testimony would be of benefit to the imposter—and that the subpeœnas are only vexatous process against them and their being carried into execution would only tend to degrade their respectability and that of the family of the Raja of Burdwan, therefore they declined to attend on their subpeœnas and submitted objections to the Sessions Judge's consideration.

Mr. Curtis wrote a letter to Mr. Shaw, informing him that the witnesses for the defence had refused to go to Chinsurah and be tested by him; but that they were within the Court compound, and if Mr. Shaw wished to see them previous to their being examined, he could come to the Court and do so.

Sooroopchunder Tewary, resident of Mooktada, deposed. I know Kisto Lal. I am his maternal uncle. His mother's name was Munnah, a Brahmunee, and his father was Sham Lal Brahmacharee. It is 8 years since I saw Kisto Lal at Kishnagur. His parents are both dead. He had two brothers, the elder named Roop Lal and the younger Gour Lal. His father was originally an inhabitant of Mohespoor. Gungapersad Tewary is my cousin. It is about 22 years removed from Mohespoor to Kishnagur. Kisto Lal was born at since Sham Lal, Mohespoor, and his brothers at Mooktada. Kisto Lal was about 12 years old when Sham Lal removed to Kishnagur. Kisto Lal has studied the Bengali, Persian and the English languages—the late slightly. Sham Lal never resided at Mooktada, but his family used frequently to visit us and I used to see him occasionally in Kishnagur. Mudden Tewary and Shampersad Tewary are my brothers. They about 5 years ago removed their homesteads from Mooktada to Mourlee. I never saw Kisto either in any service, or in the habit of a Devotee.

Fakeerchund Tewary of Mooktada, deposed. I am the maternal uncle of the prisoner Kisto Lal and the brother of the last witness. I was very young when my sister married the prisoner's father Sham Lal. Roop Lal died at Kishnagur 5 years ago, and Gour Lal quitted his village much about that time Gour Lal quitted his village, and I have not seen him since Sham Lal died about 12 months ago. I have not seen Kisto Lal for the last 7 or 8 years. None of the uncles of Kisto Lal were concerned in any gang-robbery.

Issurchunder Tewary, resident of Chandpoor, deposed. I know the prisoner Kisto Lal, he is my aunt's son. I have never been to Kishnagur, but Kisto Lal came 2 or 3 times to my village, Kisto Lal was then 6 or 7 years old and pursuing his studies. I have never been to Mohespoor. When he was 15 or 16 years old, he came again to Mooktada, when I saw him for the last time. How long it is since that period I do not remember. Fakeerchund Tewary resides in my vil-

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lage; he is a bachelor. Besides Munnah, who married Sham Lal, Fakeerchund Tewary had another daughter named Praun, who married Paunchoo Shookool a resident of Burdwan.

Mr. Bignell informed the Court that there were two or three more witnesses, one or two of whom, if he could have got them he would have been most happy; but as he has hitherto failed, in spite of all his efforts to get them, he will not keep the prosecution open for them any longer.

The *pseudo* Pertab Chunder in his defence, stated rather warmly, that he is not Kisto Lal, and, the evidence for the prosecution they had abused him by making him the son of Sham Lal, and if he were so, 10,000 persons at Kishnagur would have known it. The Judge ordered the indictment to be read to him, and then told him that if he will reply calmly to them; he will hear all his objections fully, and write them down, but if he forgets himself and misbehaved, he would order him down amongst all the other prisoners.

The charges were then read, and the prisoner replied, I am neither Kisto Lal nor Aluck Shah, I am Raja Pertab Chunder of Burdwan and the son of Raja Tej Chunder Bahadoor, late Raja of Burdwan. I never went with a tumultous assembly to seize either Culna or the Guddee of the Burdwan Raja, nor did I disobey the orders of the Magistrate of Burdwan, conveyed to me by the Daroga of Culna, whilst I was there; nor did I nor any of my followers cause any disturbance during my stay there; nor have I in any instances under false pretences taken money from either Radakissen Bysak or any other person whatsoever, as alleged in the indictment against me. I have besides what I have now stated, a written defence in which I have more fully stated the nature of my defence and which I will file to-morrow in English, with a Bengali translation. Prisoner added, that his witnesses were in the schedule, and if he should require more, he would inform the Court.

Mr. Leith, who appeared to-day for the defence, but who will return to Calcutta to-morrow, detailed slightly the nature of this written defence, which he said was much the same as what the prisoner has now stated and contains a comment on the evidence against him as given on behalf of the prosecution, regarding his identity as Kisto Lal and the particulars of his alleged death and burial, denying the correctness of these assertions and naming the witnesses who will prove his case generally, some of them his relatives.

Mr. Curtis said, that he did not think the old Raja Tej Chunder's sister Rany Tootah Koomarnee, would, ever come to this Court and give evidence in the case, and he did not think the evidence of his wives will be legally available in the case, as wife and husband are legally one and the same person.

Mr. Bignell said, that he would not start this objection, for if he did so and allowed the Rannees subpœned for the defence as the wives of the late Raja Pertab Chunder to be the prisoner's wives, and objected on that ground, he would hereby by implication, be admitting the identity of this prisoner with the deceased Raja Pertab Chunder, who he pretends to personate.

Mr. Leith replied, that he believed that Rany Toota Komarnee, the prisoner's aunt, who had brought up Raja Pertab Chunder from his infancy, and was very fond of him and is very anxious to see him, could recognise him by some particular marks on his body.

The Hurdhun Raja, Hurryhur Narain Raj, pleaded not guilty to the charges against him, and said that he was not a follower of Raja Pertab Chunder, but had merely proceeded to Culna to see the Raja, after having heard of his arrival there, and was unjustly seized as one of his accomplices.

Radakissen Ghosal, the prisoner's mooktar, pleaded that he was not at Culna, when the affray is alleged to have occurred.

Tulluk Allah Shah, the darogah of the prisoner, pleaded that he merely read the papers to the Raja and wrote

some for him, and carried a few letters and messages as a part of his duty. He neither saw any riot whilst at Culna nor did he commit any.

Saugaur Dhur, pleaded, that he likewise was a servant of the *pseudo* Raja, and had as such followed him to Culna, where he was arrested. Whilst at Culna he neither saw nor heard of any riot there, committed either by the Raja or his partisans.

Kally Jemadar, pleaded that he had been the Jemadar of the pseudo Raja previous to his arrest at Bancoorah, for a disturbance said to have been committed by the Raja there. He was there sentenced to six months' imprisonment as an accomplice in that affair. After his release, he never entered the Raja's service, but he had gone to Culna to get the wages of his former services from the Raja, and was there arrested as one of his followers. Whilst at Culna, he neither saw nor heard of any disturbance committed by the Raja or his partisans.

Jocmoon Khan Kidmutgar, in the *soi disant* Raja's employ. His plea was, that he wished the Raja to get his gudde, that is what he wished. Mr. Curtis said, no doubt, in that case the Raja will promote you to be his Dewan for your fidelity towards him, especially as you have already suffered ten months' incarceration, for being his accomplice in his affair at Bancoorah. The prisoner said there was no breach of the peace committed at Culna, either by the Raja or his retinue, and therefore he could not possibly be an accomplice in an affray which never occurred. He will, be contend in spite of every obstacle, continue to serve the Raja till he is restored to his rights or I die.

Besides the pseudo Raja, who has 273 witnesses, the Hurdhun Raja had 5 and Radakissen Ghosal 6 to prove their *alibis*. The other prisoners had none.

Robert Scott, Esq., Surgeon, 37th Madras Native Infantry, deposed. I am acquainted with the prisoner sitting (meaning the alleged Pertab Chunder). I was officiating Zillah Surgeon at Burdwan from 1815 to the end of 1817. I knew him as the young Raja of Burdwan. He was usually known as such by Europeans; but in his notes to me he subscribed himself Maharajh Dhiraj Pertab Chand Bahadoor. He wrote English in those days and spoke it, but not fluently.

Questioned by Mr. Leith. During my stay at Burdwan, I had many opportunities of seeing and conversing with Raja Pertab Chund, both in private and in public. I was very intimate with him, and visited him personally, and when he was there, I was his regular medical attendant. I generally saw him two or three times during the weeks. Since my arrival here, I have had three interviews with him in the jail, and conversed with him, and put some questions to him to satisfy myself as to his identity, and his replies convinced me that he was Raja Pertab Chund. I examined his person in the jail, and the result of it confirmed my former opinion. I attended him in 1817, when he had an ulcer in the inside of his right cheek, the mark of that ulcer is still there in the prisoner's cheek, and the tooth opposite to it is gone. When I attended on him, I gave him a gargle, which he said had such an effect on him that he could not close his mouth for two days. The ulcer was caused by a decayed tooth, and had the appearance of a sinus. The Raja had lost a tooth whilst attended him. The prisoner has likewise the mark of a buboo on the right groin, corresponding to what Pertab Chunder had the prisoner's face is darker than Pertab Chund's was, but the body is similar. Exposure of the face to the atmosphere will darken it. A person might surely make a sore in his cheek, but I do not think that he could have made it so identically on the spot as in the Raja's mouth. It could only have been made by one who had known the young Raja had one there. I saw no one at Burdwan, that resembled Pertab Chunder, and if I had seen any person bearing that strong resemblance to Pertab Chund as the prisoner does I

should not have forgotten it. I knew many Mosaib. The Raja used to perspire even in the cold weather; the prisoner is troubled with the like complaint. The prisoner's gait whilst sitting and his habit of laughing and clearing his throat previous to speaking, is the same as the Raja's was. The prisoners nose exactly like the Raja's, but the Raja's lips were protuberant and his face bloated from irregular habits. The Raja's eyes were very prominant but age will flatten them. I have a very retentive memory and on my first arrival here the novelties I saw, particularly in the Raja's family, made a strong impression on me. My situation as a Regimental Surgeon enbles me to speak decisively to the ages of natives, in consequence of all recruits for my regiment, having to pass examination before me, before they are enlisted in it. From my examination of the prisoner in jail, I should suppose him to be between 45 and 46 years old. I asked the prisoner why he did not converse in English, as he formerly did. He replied from having discontinued it he had forgotten it; he however made, one attempts, but failed to speak intelligibly. When I returned from England to India in 1832, after an absence of two years, I had greatly forgotten the Hindoostanee which I formerly spoke fluently. Pertab Chund was a hard drinker and his memory might have been affected by it. The prisoner drew for me in the jail, a plan of the Rajbarry at Burdwan, and as far as he sketched it, the plan was perfectly correct. The prisoner appears somewhat taller than the Raja was, but the rotundity of the muscles being diminished by age, the leanness of the body makes the person appear taller than when he is stout. The prisoner is thinner than the young Raja was. I, after my arrival here saw Mr. Trower in his office. He did not recognize me, and from my conversation with him then, he did not appear to have a good memory. From all that I have seen of the prisoner since my arrival here, I have no doubt that he is Pertab Chund.

ORDER OF THE SESSIONS COURT.

The Kazi Saheb gave his Fatwa to the effect that as regards the identification, the evidence for the prosecution does not outweigh that which was given for the defence. Who the accused really is has not been proved by the prosecution. So long as it is not proved that he is a different person he could not be convicted of the offence that he had assumed the name of Protap Chand. The sessions Judge held otherwise. He found that the accused is Kristo Lal Bromochari, consequently he could be convicted of the offence that he had assumed the name of Protap Chand. The two opinions having thus differed, the sessions Judge brought the matter to the notice of the Nizamut Court. Along with that reference, he stated that of the charges which were brought against the accused, all save one have been proved. Therefore he ought to be sentenced for five years imprisonment, or to three years imprisonment in the least.

ORDER OF THE NIZAMUT COURT.

The reference made by the sessions Judge of Hooghly was laid before the Nizamut Court. The Judges consider the question as regards the offence for which the accused may be convicted. Up to this time he was arrested and kept in custody for the offence of unlawful assembly committed at Culna; and yet no breach of the peace took place there. It has been established at the Supreme Court that no breach of the peace had taken place at Culna. After this adjudication it does not look well to award punishment for the offence of unlawful assembly committed at Culna. In order to award punishment for any other offence, there is no other offence than that of his having assumed the name of Raja Protap Chunder. Is it such a great offence to assume the name of another person? More specially no body has been injured in any way by the assumption of the name of a dead person. No body has laid any complaint for the same. What

then is now to be done? The Kazi Sahib of the Nizamut Court gave his Fatwa to the effect that if any person assumes the name of another person for self aggrandizement, he is guilty under the Mahommedan Law. The order of the Judges was that Alack Shah, alias Protap Chand alias Kristo Lall Brahmachari be fined Rs. 1,000 for his having assumed the name of the deceased Moha rajadhiraj Protap Chand Bahadoor, and on default of payment be sentenced to six months imprisonment. Be it known that he has been acquitted of the other charges.

PETITION.

AT A COURT OF NIZAMUT ADAWLUT, HELD AT THE PRESIDENCY, UNDER DATE THE 1ST JULY 1839.

Present:—W. BRADDON, and C. TUCKER, ESQRS., Judges.

Read a petition presented by Aluk Shah, *alias* Pertab Chunder, *alias* Kisto Lal Pauree Brahmacharee, praying that Court will review or set aside, or suspend, so much of their sentence of the 13th ultimo, as relates to the question of the petitioner's identity, and to grant a new or further trial of so much of the said charge, as relates to the said question, upon the grounds set forth in his petition, which are briefly as follow:—

1*st*.—That the conviction of this Court debars the petitioner from prosecuting in the Civil Court for the recovery of his rights.

2*dly*.—That, on the point of identity, the petitioner has had nothing approaching to a fair, complete, and satisfactory trial, in as much as a variety of heterogenous charges having been preferred against him, his advisers were distracted by their number, and devoted their attention to such part of them only as appeared to involve criminality. That his legal advisers, not conceiving that the charge of personation could never amount to a tangible crime, confined themselves to adducing just so much evidence as was sufficient to throw a doubt upon the question of identity, reserving the most material evidence on that point, until the contemplated civil trial should take place. And further, in as much as several witnesses, for the attendance of whom application was duly made to the Magistrate, were not produced, because the perwannahs issued contained no penalty for non-attendance, nor was any process of Court issued to enforce their attendance, whilst that of witnesses for the prosecution, were enforced by attachment and seizure of their property.

2. On the first point the Court do not consider it necessary to enter into any discussion as to whether the petitioner's statement be correct in law or not. They observe that the fact established against the petitioner, having been declared to involve an offence punishable under the law which they are required to administer, the Court could not proceed to pass upon him a sentence of acquittal, merely because a finding of an opposite character might effect his civil claims.

3. On the second point; the Court find on the record of the trial before the Sessions Judge, in a long and labored written defence, filed on 27th December, 1838, the following sentence, "I should only say on this subject, (the charge of personation) that so satisfied were my legal advisers of the small chance which I had of obtaining justice in the Magistrate's Court, that they advised me to reserve my defence for this Court. Here I mean to set it up. Here I mean to show, by clear and undoubted testimony, that I am no impostor, but in truth and verity, the zemindar of Burdwan." This sentence would seem to disprove the assertion, supposing it to be one entitled to consideration, that the petitioner considered the charge of personation to be of no moment, and voluntarily abstained from opposing the evidence adduced on the part of the prosecution in support of it. The Court cannot for a moment suppose that the petitioner's advisers were not fully aware of the importance of rebutting this part of the charge, if possible; indeed it was urged,

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on the part of the petitioner, that unless the charge of personation could have been established, the whole of the charges fell to the ground, as every other part of them is set forth as done in furtherance thereof. This is stated by the petitioner in the same defence, in the very outest of which he says, "the only charge that the malice of my enemies, and the ingenuity of the Government Officer, the Magistrate of Hooghly, have been able to bring against me, amounts to nothing more, if made out, than a misdemeanor, while it is not attempted to be concealed, that this charge, brought and supported by the official influence and *extra official* labours of the Government Functionary, the Magistrate of Hooghly, was merely intended to be subsidiary to that which has all along been admitted to be the chief object of this prosecution, *viz.*, to try in this criminal proceeding a mere civil right; in fact, to prove that I had no right to the Guddie of Burdwan.

4. Again, with regard to the witnesses summoned by the petitioner, the Court finds the following circumstances recorded on the proceedings of the Sessions Judge.

1*st*.—An application from the petitioner filed 5th December, 1838, consenting to withdraw a previous application for the attendance of nine European gentlemen witnesses.

2*dly*.—Two applications filed 21st and 29th, December, 1838, requesting the Court to suspend proceedings for a few days, to give his counsel time to consult and decide whether it would or would not be necessary, to call all the witnesses cited to prove the petitioners identity, as he was in hopes, that after such consultation he would be enabled to dispense with the attendance of many of his witnesses.

3*rd*.—An application to the Sessions Court, filed 3rd January, 1839, stating his readiness to go into the whole case of his identity, and produce the whole of the evidence in support thereof, provided he were assured, that in the event of his proving himself to be the veritable Raja Pertab Chund, the Government would acknowledge him as such, and put him in possession of the honors and rights appertaining to the Raja of Burdwan. If not, he will not bring forward the whole of his evidence, but confine himself to the examination of only a few more witnesses on the question of identity.

4*th*.—An application to the Sessions Court, filed 5th January, 1839, setting forth, amongst other things. "That your petitioner has now selected, from the very large number of witnesses subpœnaed for the defence, the names of several Europeans, as well as Natives of credit and respectibility; that these witnesses have given their depositions on oath in your Court, and have declared their full conviction of my identity, as the true Raja Pertab Chund." The petitioner goes on to state, that he had many more witnesses who would depose to the same effect, but that he was "unwilling to occupy the time of the Court to an almost indefinite period." In conclusion, the petitioner declines enforcing the attendance of the Rannees and Prawn Baboo.

5*th*.—An application to the Sessions Court, filed 11th January, 1839, soliciting the early judgment of the Court, notwithstanding the absence of several witnesses, as he had not the means of compelling their attendance.

5. With reference to the foregoing remarks, it is clear to the Court, that the petitioner not only knew in what consisted the strength of the charges against him, but that he prepared himself to meet, and further, that he himself on 11th January, 1830, called for the judgment of the Court.

6. The Court further observe, that since the trial was removed to this Court, the petitioner presented two petitions to the Court, one on the 8th March, the other on the 18th April last, the burthen of which is to deprecate delay and urge the Court to an early decision; in neither of these, nor in a long statement, filed on the 26th of April last, did the petitioner urge any

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further enquiry on the plea of insufficient investigation as to his identity in the Lower Court.

7. The Court consider, that on the petitioner's own showing, there are no grounds for a new trial; in addition to which they are satisfied of the fact of the death of the late Raja Pertab Chunder and the burning of his body, as established by the evidence on the trial. They, therefore, see no grounds whatever for complying with the petitioner's application for a new trial, which is ordered to be rejected accordingly.

(Compared,) R. STUART. (True copy,) J. HAWKINS. *Registrar.*

TO THE HON'BLE THE JUDGES OF THE NIZAMUT ADAWLUT.

The humble petition of Maha Raja Deeraj Pertab Chund Bahadoor.

SHEWETH.—That the Futwa of the Law Officer of the Nizamut Adawlut in this case, having declared, that false personation for one's own advantage is an offence under the Mahomedan law, your Petitioner has made enquiry amongst those learned in the Mahomedan law, for the authority on which the Law Officer of this Hon'ble Court has declared such to be an offence under the Mahomedan Law, but your Petitioner has been informed by those from whom he has made such enquiry, that they are unable to find any authority to that effect.

That your Petitioner is desirous of being informed in what book, and by what Mahomedan Lawyer, or on what authority, the Futwa of the Law Officer is founded.

That your Petitioner is desirous of being informed, under what Order or Regulation the proceedings in this case were referred to this Court by the Judge of Hooghly.

That your Petitioner is desirous of being informed, under what rule or regulation your Petitioner was fined 1,000 rupees by this Court.

Your Petitioner prays, that this Hon'ble Court will issue an order that the said Law Officer do state the authority whereon he has made such Futwa, and that your Petitioner may be furnished with the number and date of the regulation or order under which this cause was referred to this Court, and under which your Petitioner was fined as aforesaid.

And your Petitioner shall ever pray, &c.

RESOLUTION OF THE PRESIDENCY COURT OF NIZAMUT ADAWLUT.

Dated the 19th July 1839.

Present:—W. Braddon and C. Tucker, Esqrs., Judges.

Read a petition dated the 18th instant, presented by Aluck Shah, *alias* Pertab Chund, *alias* Kisto Lal Bramacharee, praying that he may be informed of the law and authority under which his case was referred to this Court, and under which he was convicted and sentenced.

The Court observe, that any objections the petitioner had to urge to the trial and sentence, on the point of legality or otherwise, should have been stated in his application for a new trial, and that as the proceedings in the case have been finally closed by the rejection of that application, they order that the present petition be rejected.

The Court further remark, that as they have judicially pronounced the petitioner not to be Maharaja Pertab Chand, they cannot in future receive any petitions or applications from him under that name and title.*

(Compared,) H. STUART. (True copy,) J. HAWKINS. *Registrar.*

Hurkaru, August 6.

* This certainly appears to us a more *moderate* order than the petition deserved!—ED, HURK.

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To the Editor of Bengal Hurkaru.

SIR,—A friend has just put into my hands your paper of the 6th instant, in which I observe a letter from Mr. W. D. Shaw, containing a number of allegations, relative to the late trial of the *pseudo* Raja Pertab Chund, which are calculated seriously to effect the characters of Messrs. Curtis, Ogilvy and myself. This is, as you are aware, by no means the first attack of the kind which has been directed against me in the Calcutta papers, and had this, like those which preceded it, been confined to remarks upon my own conduct, I should, as on former occasions, have passed it over in silence—holding, as I do, that, while the Government and the Sudder Court continue to exercise their task of supervision with the same strictness and impartiality as at present, it would ill become any public officer to constitute a new tribunal in the community of Calcutta, or to call upon the public press to judge of the propriety or impropriety of his actions. In the letter before me, however, the charges against myself and the other subordinate officers whom I have mentioned, are merely brought forward to serve as the groundwork for an attack upon the judicial system of the country generally, and upon the Sudder Court in particular. I do not therefore consider, the means of refutation being in my power, that I should be justified in allowing these allegations to pass unnoticed. The more especially as I am not aware to what ulterior use it may be intended to put them, and I now forward to you, with the hope that you will do me the justice to publish it, a concise, but at the same time, I trust, a sufficiently full explanation of all matters alluded to by Mr. Shaw, so far as I have any knowledge of them. In so doing, I beg it distinctly to be understood, that I enter into no controversy with any one, and more especially into none with the writer of the letter before me. My intention simply is, to place the public in possession of the true facts of this case, where they have been misrepresented, and to enter upon record my contradiction of the calumnies which appeared in your paper of the 6th instant. Having done this, I shall have performed all that can reasonably be expected of me, and shall henceforward leave the public to allow what weight they may deem proper to any similar attacks. I have only to remark further, that some of the charges contained in the letter alluded to, relate to occurrences which took place in Mr. Curti's Court, and of which I have no knowledge. These, therefore, I have not noticed. I do not doubt, however, that they are all equally capable of satisfactory explanation with those to which I now reply.

Allegations.	*Answers.*
1*st.*—That during the trial at Hooghly, he (Kisto Lal) was a close prisoner in jail, and was denied free communication with his legal advisers.	Kisto Lall Bramacharee was detained a prisoner in the Hooghly jail, for reasons which were at the time considered imperative by the Nizamut Adawlut, the Superintendent of Police, the Sessions Judge and myself. I should occupy too much of your space were I to detail these reasons at length; and in fact, to render them intelligible to your readers, I should be under the necessity of going through the whole case *ab initio*. The public, however, have too much good sense to render it necessary for me to assure them that so many public officers would not have concurred in sanctioning this measure, had it not been recommended by very strong and sufficient reasons. That the prisoner was "denied free communication with his legal advisers" is not the case. Mr. Shaw, Mr. Graham, and generally any person who wished to see him, were for many months admitted at all hours of the day. Latterly Mr. Shaw's conduct induced me to restrict the hours of admission, but they were still amply sufficient for every purpose.
2*nd.*—That he was refused to be held to bail.	2*nd.*—This is in fact a reiteration of the first charge relative to the im-

prisonment of Kisto Lal and calls for no separate answer.

3rd.—That he had spies put upon him whilst in jail, by the Magistrate of Hooghly.

3rd.—No spies were ever placed over the prisoner, either by myself or by any one else, and the only circumstance to which the allegation can allude to this. When the case was pending before the Sessions Court, numbers of person visited the jail, for the purpose of identifying the prisoner. As it was considered necessary that the Government prosecutor should be aware of the grounds upon which these parties arrived at their various conclusions, the Constables on duty at the jail, was directed to accompany these parties in their visit, and to report to me the nature of the prisoner's answers to the questions put. What an *honest* man with an *honest* cause could have found to object to such a precaution, it is difficult to conceive.

4. That his mooktears and servants were confined in jail.

4. These men were arrested by Mr. Ogilvy at Burdwan, a day or two before the arrest of their principal at Culna, and were forwarded in Hooghly with the rest of the prisoners. Those only who could procure bail were released, and the others, including some who chose to remain in attendance on the prisoner, were of course detained.

5. That many of them died there from ill usage, want of clothing and sustenance.

5. This is certainly an accusation calculated to try any one's temper, but I will endeavour to answer it with moderation. No prisoner has ever died in the Hooghly Jail, since I have had charge of it, from ill usage, want of clothing, or want of sustenance, or from any disease brought on by any of these things; and if any person should still entertain any doubts upon this subject, I beg to refer him to Dr. Wise, now Secretary to the Committee of Public Instruction in Calcutta, who filled the office of Civil Surgeon at Hooghly during the whole time of pseudo Raja's trial. Some of these prisoners, if I recollect right, died of diseases which they had contracted previous to entering the Jail, and the bulk of the remainder, (either 15 or 16 was the extent of the mortality) died of dysentery, brought on, it was supposed, by the Bengalee rice, to which they were unaccustomed. Dr. Wise, in consequence, proposed that the allowance of the prisoners should be increased, in order to enable them to purchase otta and other up-country articles of diet, an arrangement which, as Dr. Wise can certify, I immediately approved of, and promised to recommend. Mr. Curtis, however, rendered this unnecessary, by sending me the requisite authority before Dr. Wise had time to send in his report. With regard to clothing, it is not customary to furnish Government clothing to any except to convicted prisoners, and even in their case to none except those who are sentenced to more than three months' imprisonment. In this case, however, by Mr. Curtis's authority, all the prisoners who required it were at the commencement of the rains, supplied with new clothing at the Government expense.

6. That some of his witnesses were, by the orders of the Magistrate, sanctioned by the Judge, detained by the Government servants in their custody, and that his legal advisers were denied access to them, save in the presence of Government Officers.

6. I am not aware that any orders were issued by me on the subject. The custom of the Court is to retain all witnesses brought in by the peons in custody of the Nazir, who is responsible for their being produced in the Sessions Court when called upon. Mr. Shaw, as I recollect hearing, applied to the Judge to allow the witnesses to be placed in his custody, request which as being contrary to the custom of the Court and the wishes of the witnesses, somewhat loudly expressed upon the occasion, was very properly refused.

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7. That an order was issued by Mr. Samuells, to prevent him seeing his Vakeels in jail, save in the presence of a man whom he appointed for the purpose of overhearing and communicating to him all that passed.

7. So far is this from being the case, that it was particularly explained to the Constable on duty, that he was to allow the Lawyers free and unrestricted intercourse with their client upon all occasions. This order was only violated upon one occasion, by a Constable then on duty at the jail for the first time, and immediately upon hearing of it, I reprimanded him for what had taken place.

8. That the Judge, who was trying the prisoner in the in the Sessions Court, the Magistrate who was prosecuting him there, and the gentleman who was conducting the prosecution, were, when out of Court, in constant communication together.

8. To any man of right feeling this is unworthy of an answer. Mr. Curtis, Mr. Bignell and myself, are old and intimate acquaintances, and, living at the same station, our intercourse, was frequent, although so far as Mr. Curtis was concerned, I do not believe that it exceeded a weekly visit, and an occasional dinner party. To those who know us, it will be unnecessary to deny, (what is here attempted to be insinuated) that Mr. Curtis would ever had allowed himself to be influenced in his decisions by anything which we could say, or that Mr. Bignell or I ever would have attempted as to influence him.

10. That my client had applied for many witnesses, and that it was given out publicly by the Judge, that the official authorities had no means of compelling the attendance of witnesses on the prisoner's behalf.

10. I am very positive that the Judge never made any such sweeping assertion as this. What he in all probability did say, was that he had no authority to pay the travelling expenses of the prisoner's witnesses and that he could not compel the attendance of European witnesses from the Upper Provinces, unless their expenses were paid.

11. That the subpœnas issued to the witnesses for the prosecution, contained a penalty for non-attendance, while no such penalty was inserted in those issued to the witnesses for the defence.

11. This is in part true, although not altogether so, as several of the witnesses for the defence were served with subpœnas containing the penalty, while a great number of the subpœnas for the prosecution contained no penalty. It happened thus. The subpœnas ordinarily issued by our Courts, never contain any mention of penalties, nor is it at all necessary by regulation that they should, the Judge having a power of levying the fine quite independent of any thing contained in the subpœnas. I had, however, during these proceedings, but without any reference to them, sent down to the Lithographic office, a new form of Sessions subpœnas, which did contain a penalty. The printed copies of this form were not furnished to me until a short time previous to the commencement of the case in the Sessions Court. The greater part of the subpœnas for the defence had then been issued in conformity with the petition of the prisoner's advisers, and were of course written in the old form, without penalties. The subpœnas for the prosecution were not for the most part issued until a few days prior to the commencement of the trial, and were consequently, with a few exceptions, of the new form.

12. That the properties of the witnesses for the prosecution were seized, to compel their appearance, though the perwannas were not served, and that the properties of the witnesses for the defence, on

12. This is not the case, as many of the witnesses for the defence had their property attached, and the same course would have been pursued towards all, had the defendant's adviser's applied for it, or had they

whom perwannas had been served, were not seized.

not dispensed with their evidence of their own accord. Mr. Shaw does not appear to be aware that, in criminal cases, a subpœna may be served upon the house, if the individual is not to be found.

13. That the prisoner's mookhtars were beaten by a Government servant high in office, and plundered on the highway, and on their road to Court, by other Government servants, of their papers, and then thrown into jail.

13. This refers, I imagine, to an arrest of some parties at Burdwan, by Mr. Ogilvy, in April of last year, Dr. Cheek and Mr. M. A. Shaw, who were, I believe, present at the arrest, can testify to the gross exaggeration of this statement.

14. That many of the prisoner's material witnesses were not produced, and that no reason was given why they were not produced.

14. If by material witnesses are meant Doctor Halliday, and other gentlemen in the North, Western Provinces, I have merely to observe, that the defendant might have procured their attendance, by paying their expenses. The Sessions Court, according to an opinion of Mr. Advocate-General Spankie's, recorded in our office, could not compel the attendance of a European witness, by arresting him for contempt, without subjecting the Judge to an action for false imprisonment. Reference was made to the Nizamut Adawlut on the subject, and had it been possible the presence of these gentlemen would certainly have been compelled. In the defendant's petition of the 5th, 21st and 29th December, 3rd, 5th and 11th January, he withdraws his applications for a great proportion of his witnesses, and finally requests, of his own accord, that judgment may be passed without waiting for any further evidence. This complaint, therefore, is rather unmeaning.

15. That witnesses were examined against him in his absence and in the absence of any one on his behalf.

15. This refers to the trial at Burdwan, where, owing to circumstances over which he had no control, Mr. Ogilvy was under the necessity of examining the witnesses in the absence of the prisoner. Mr. Shaw, however, omits to add, that these witnesses were, at the request of the prisoner himself, recalled and re-examined at Hooghly, in his presence.

16. That Mr. Samuells wrote to Dwarkanath Tagore, the letter which has been quoted in the petition.

16. This is perfectly true, bating some mistakes in the copy; and it is also true that I produced Dwarkanath Tagore in Court, in order that the defendant's Counsel might examine him upon the subject of that letter, and upon every point to which it referred. I will not now say anything of the mode in which that letter was obtained, or of the use which was made of a private note, but will go on to explain the circumstances under which it was written. I was conducting a preliminary enquiry, in a case in which there existed no private prosecutor. In such cases the constitution of the Company's Courts, renders it necessary, that the Magistrate should, in addition to his own functions, undertake those of prosecutor, and should, herself, or by means of his subordinates, search for and produce all the evidence which he may deem requisite on the side of the prosecution. That this is a great defect in our system, few will deny, and a remedy for it was suggested some little time ago, in Mr. Halliday's Minute on the Police System. With this, however, I have at present nothing to go. It was in the exercise of my duty as prosecutor, that I wrote to Dwarkanath Tagore for the names of some witnesses whom he had formerly pointed out to me, and that I at the same time agreed to dispense with his own evidence, which, as I had already stated to the prisoner's legal advisers, was of a nature which I considered to be inconclusive. My duty

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was to obtain evidence upon a particular point, and whether I applied for the names of the witnesses verbally, by a private note, or by a public letter, was a matter of not the slightest consequence to any one, as I had a perfect right to adopt any of those modes which I might consider most conducive to the end I had in view. The only reason which I had for embodying my request in a private note, was that the matter occurred to me when about to answer a note of Dwarkanath's, and that by mentioning it there, I saved time. I may add, that I was well aware from the commencement of this trial, of the construction which persons unacquainted with the system of our Courts, were likely to put upon my conduct, while engaged in procuring evidence; for, be it observed, this was not a case where evidence was to be had without some diligence in searching and enquiry for it, and I applied in consequence to Government to sanction the appointment of a prosecutor, who might collect and lay the evidence before me. It was not, however, considered expedient to depart on this occasion from the ordinary practice, and I was, as I have before stated, obliged, in consequence, to undertake the functions of prosecutor in addition to those of Magistrate.

17. That Mr. Samuells furnished, or sanctioned the furnishing of, untrue, exparte reports of the evidence for the prosecution, to a public newspaper.

17. The paper alluded to is the *Hurkaru*. A silly reporter was deputed by the publisher of that paper to Hooghly, for the purpose of reporting the proceedings in my Court. The reports which he furnished, however, were so exceedingly incorrect, that Mr. Sutherland, now Principal of the Hooghly College, who resided with me, and who had formerly been connected with the *Hurkaru* Press, requested me to furnish him with my notes, in order that he might correct these reports before they were forwarded. To this, of course, I could have no objection, and the reports which appeared from that time forward in the *Hurkaru*, were the only reports which gave a tolerable idea of the evidence which was given in Court. That there were many inaccuracies even in those, is very probable, as Mr. Sutherland's leisure was not such as to enable him, in most instances, to give more than a general correction. A comparison with the original record will satisfy any one, however, that these reports are in the main, exceedingly faithful and correct.

18. That he brought witnesses to prove the accused to be Kisto Lal, and that he sent them away without public examination, after ascertaining from them that he was not Kisto Lal, and that these same witnesses were not produced again when applied for as witnesses for the prisoner.

18. No witness ever told me that the prisoner was not Kisto Lal, nor do I believe that any witness summoned for the prosecution, ever said so to any one of my officers. I must observe, that I only accompanied the parties who came to identify the prisoner as Kisto Lal on one occasion, when I was accompanied by Mr. Halkett, now Magistrate of Dinagepore. Several of these people (for they were not then witnesses, be it observed, but merely people who had been sent for from Kishnagur, in order to ascertain if they could identify the defendant,) stated that the prisoner was like Kisto Lal, but that they could not swear to him. The rest spoke positively as to his identity with Kisto Lal. The latter were retained as witnesses, the former were of course released. On all other occasions one or other of the officers of my Court accompanied the Kishnagur witnesses, and, as I have said above, I never heard, nor do I believe that any of the parties whom they accompanied, ever told them, that the prisoner was not Kisto Lal. I have, an answer to a former allegation, explained, that it was at the prisoner's own request, that more witnesses were not examined. There could have been no difficulty in procuring all these men from Kishnagur again,

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or at least the greater part of them, and had they been required, I should have taken care that every means was taken to ensure their attendance.

19. That Mr. Samuells purchased and distributed numbers of a native newspaper in his district, (which created an impression against the prisoner,) before the prisoner had called a single witness in his behalf.

19. The fact of the purchase and distribution of the *Sumachur Durpun*, to the darogahs and zemindars of the district, is perfectly correct. Much misconception prevailed among the people as to the proceedings in my Court, and it was at the suggestion of a friend, that in order to put the native public in possession of the real nature of the case, I purchased and distributed regularly from week to week, 30 copies, (I believe) of this paper, which contained a report of the evidence in Bengalee and English. No comments had accompanied this evidence, when I first commenced distributing the papers, and if any impression was created against the prisoner by the perusal of the evidence, it was a legitimate impression, which must have been shared by the readers of all the Calcutta daily papers. When it is borne in mind that one of the principal objects aimed at deciding the question of the prisoner's identity, was the allaying of that excitement, which his pretensions had given rise to throughout the principal districts of Bengal, it will be seen how necessary it was that the people should be acquainted with what the authorities were talking, and with the real features of the case.

20. That it was in the paper so distributed stated, that it had been clearly established, that the prisoner was Kist Lal, and that he, Mr. Samuells, had at length been appointed full Magistrate of Hooghly.

20. An opinion something like that alluded to in the first part of this allegation did, I believe, appear in an editorial of the *Durpun*, when the evidence in my Court had been concluded; but Dr. Marshman who, if I am not mistaken, edits the *Durpun*, will, I am, sure, be very happy to satisfy every one, that neither with that, nor with any other article which has appeared in that paper, have I ever had any thing to do. What the latter part of this allegation has to do with the case of the Pseudo Rajah, I am somewhat at a loss to understand. If it is intended, however, to lead the public to infer, that my management of this troublesome case led my appointment as full Magistrate of Hooghly, I beg distinctly to state, that such is not the fact, my full appointment having, long prior to this business, been contingent upon the transfer of Mr. Charles Grant, then Magistrate of Hooghly, to some other situation.

21. That part of the evidence given in the Magistrate's Court was abstracted.

21. This so far is correct; but as there is a very material omission, I must be at the trouble to state the facts. It happened upon one occasion, while trying the case of "illegal assemblage at Culna," that during a temporary absence in my private room, some two or three sheets of paper, which lay upon the Mulah's table, containing the evidence of three or four of the Culna chokeedars, (if I recollect right) were purloined. On entering Cutcherry, I was informed of what had taken place, and after searching in vain for the papers, the witnesses were recalled, and their evidence was taken down as nearly as possible, in the same words as before. I may add, that their evidence was quite unimportant, and that the circumstance was duly reported by the proper officer, and entered in the record.

22. That part of the proceedings in Court were falsified.

22. To what Court or to what proceedings this refers I am not aware, I can only say, that it is certainly not true as regards my own Court, and that I do not

believe it to be the case with regard to any other.

In your editorial comments upon the letter which contains these allegations, you state it as your belief, that the Sudder Court have no power to take notice of charges when preferred in the indirect manner adopted by Mr. Shaw on the present occasion. In this you will, probably, long ere my letter reaches you, learn that you have been mistaken. The Sudder Court not only have ample power to enquire into the misconduct of their subordinates, be it brought to their notice in what manner it may, but it is their bounden duty to do so; and any one acquainted with the practice of that Court in these matters, will inform you, that if these allegations of Mr. Shaw's, or the references which he wishes to be drawn from them, could have boasted of any foundation in truth, the judges would not have waited for Mr. Shaw's representations or applications, but would themselves have taken up and investigated the matter at once. When the public are aware that the paper's of the Pseudo Raja's case, which must in nine instances out of ten have contained the confirmation or the refutation of Mr. Shaw's charges, were before the Court at the very time he brought those charges forward, and that upon other points not susceptible of a satisfactory solution from these papers, full explanations were submitted by the subordinate officers, they will, I am confident, arrive at a very different conclusion from Mr. Shaw, and will not believe that conduct, such as that charged upon Messrs. Curtis, Ogilvy and myself, is either considered correct or is likely to be slurred over by the principal Court. What may be the motives which have actuated Mr. Shaw in the sweeping attacks which it has been his pleasure to make upon different functionaries, and upon Mr. Ogilvy and myself in particular, for the last 15 months, I shall not now stop to enquire. I would only request the public, to reflect for a moment on what it is that they are called upon by this gentleman to give credence to. They are, in a word, required to believe that three officers of Government,* otherwise of unblemished reputation, have, with an unanimity the most extraordinary, and without any adequate motive, united, as far as lay in their power, to injure and persecute a wretched and contemptible impostor. That in order to do this they abused their official influence in every possible way. That the Superintendent of Police and the Sudder Nizamut, which includes some six of the most talented men in the Civil Service, aided and abetted and finally set their seal upon this work of iniquity; and that the Government sanctioned the unjust and oppressive conduct of subordinates. And this they are asked to believe upon the unsupported assertion of a single man himself totally ignorant of the whole of the early history of this case, and of the motives which actuated the authorities in most of the measures which they subsequently took. If there are any people who really do believe this, I can only say, that I pity their delusion. What possible reason the Government could have had, for desiring any thing more than even-handed justice in this case, I have never yet heard any attempt to explain. The general conduct of the Government of this country might, I should think, have induced the community to give them credit for rectitude on this occasion, and to believe that where no civil motives were visible, none in truth existed. Some, however, there are, whose purposes would not be answered by the adoption of this honest and straightforward mode of reasoning. Omitting to shew what inducements the Government could have had to desire the perpetration of injustice, or even to prove that they desired anything of the sort, these persons proceed with the utmost coolness to make the assertion, also unproved and unsupported, that the

* I might add two more, Dr. Cheek and Mr. Barlow, who were at one time the objects of similar attacks. In fact no public officer who has had anything to do with this case, has escaped without some quantum of abuse.

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Sudder Court and their subordinates, were influenced in their decisions, by a fear of incurring the displeasure of Government, or by a hope of obtaining the favours of their superiors. No possibility of honest motives ever appears to enter into the calculations of these men. Because *they* have taken on view of a case they seem to think that all men are rogues, who (with better opportunities of judging) take another. Now I will not do my own service so much injustice as to set seriously to work to refute the assertion, that the Company's judges are men who are ready to prostitute their honour at the nod of the Government. I will merely remind the public, that it was impressed upon them with great pains, not long ago, by the Anti-Resumptionists, a very large and a very respectable body of men, that in cases where the most vital interests of the Government where at stake, these very judges had proved to be independent that the Government dared not enter their Courts as Plaintiffs,* and I will leave them to consider whether the Sudder Court, composed, as it is, of men selected from this body of judges for their talent and integrity, are likely, as was asserted in a Calcutta paper not six weeks ago, to have truckled to the Government upon this occasion, where in truth the interest of the Government was next to nothing. I will only add, that if the motives of the authorities throughout this case where laid bare and the real nature of the measures taken made known to the public, as I trust they may some day be, I am confident there is not a right thinking man in India, but would acknowledge, not only the expediency but the propriety of every proceeding which has been had recourse to. I have come forward with great reluctance on this occasion, and having now afforded the public a standard by which they may estimate the value of any future statements regarding the conduct of the public authorities in the matter of the Pseudo Raja, I must decline all further discussion upon the subject, with a request, that the Editors of those papers which have copied Mr. Shaw's letter, will do me the favour to insert my reply.

I remain, Sir, your obedient servant,

E. A. SAMUELLS,
Magistrate of Hooghly,
on Deptn., Tirhoot.

Mootehary Chumparun, Aug. 13th, 1839.
Hurkaru, May 27.

* This is the conclusion of the Anti-Resumptionists—not mine. It is sufficient for my case that the independence of the judges was so notorious, that the Anti-Resumptionists thought that it afforded a good ground for their attack upon Government.

DEATH OF SOI-DISANT RAJAH PRATAP CHANDRA.

For his having spoken against the Government during the Sonthal insurrection, he was arrested at Champetolla, and kept in the jail of the 24 Pergunas. After his release in the year 1856, he used to live at Burranogore on the North of Calcutta. He died at the Moyra Danga Palli before the Mutiny of 1857 in the house of an insignificant person surrounded by 2 or 3 common people.

What was set forth in the Bungo Durshun as to his having been kept in confinement at the Fort during the Mutiny was not correct. He had died before the Mutiny, and the only person kept in the Fort during the Mutiny was the Nabab of Lucknow, and no other person.

MM—MM

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CALCUTTA SUPREME COURT.

MONDAY, AUGUST 13, 1838.

(Before SIR J. P. GRANT, Kt., Judge).

JAMES BALFOUR OGILVY, C.S., was indicted for the manslaughter of Tarrachand Chuckerbutty, at Culna, on the 2nd May 1838. The indictment contained two counts, one for shooting him with a pistol, and the other for aiding and abetting persons to the jurors unknown, in shooting him with a musket. Two other indictments similarly charged Mr. Ogilvy with causing the deaths of Serajee Majee, and Govind Sing.

Mr. Ogilvy pleaded *not guilty*.

Counsel for the prosecution, Messrs. Clarke and Leith.

Counsel for the defence, Messrs. Prinsep and Morton.

Several highly respectable European tradesmen were upon the jury. One native name was called, but challenged by the prisoner's counsel. Mr. Ogilvy was stated to be, and indeed appeared, in a very delicate state of health, and was accommodated with a chair near his counsel, placed without the dock. The Court was densely crowded throughout, and the deepest interest excited.

Mr. Clarke. Gentlemen of the jury. The case that now comes before you is in every respect most important as it affects the public, and most important as it affects the prisoner at the bar. You have, doubtless, heard various contradictory rumours and statements connected with this matter. I need scarcely remind you how desirable it is that you should endeavour to consider this a new case altogether, and dismiss from your minds all that you have heard without the walls of this court.

Gentlemen, the prisoner is a mofussil magistrate, and stands charged with having caused the death of Tarrachand Chuckerbutty, at Culna, on the 2nd of May. If the assembly at the place was an illegal one—if they came for an unlawful purpose and could not possibly be dispersed without the interference of a military force, I admit that Mr. Ogilvy stands justified in having had recourse to that force. The first point therefore is, to ascertain for what purpose the assemblage was collected, and how they comported themselves. I need scarcely inform you, that a person called Pertaub Chand, is the claimant of the Burdwan property, being alleged to be the son of the late Raja Tejchunder Bahadur. The income of this property is said to be about fifty lakhs per annum. Persons of wealth and respectability have supported the claims of Pertaub, and have advanced funds in his aid. This, although it may be an offence according to English law, is perfectly legal according to Hindu law. Pertaub engaged the services of an attorney, and instituted a suit of ejectment in this court, to recover certain property belonging to the Burdwan family, situated in Calcutta. Mr. W. D. Shaw first acted as his attorney, and afterwards Mr. R. Graham. About two years since, I may mention that Pertaub was arrested on a charge of disturbance and breach of the peace, and under some mofussil regulation or other he was convicted, and sentenced to six months' imprisonment. Last April, he came to the resolution of proceeding to Burdwan, for the purpose of being recognised by his Ranees, and other relatives, and thus procuring evidence to support his case. He had applied for aid and safe escort from Government, but this had been refused. All these circumstances shew that his intentions were peaceable and his object legal. He was accompanied by several followers and boats, but in no very large or unusual number. It was only upon one occasion that he went on shore, and no disturbance or breach of the peace was committed then or at any other time. At Culna, he remained from 11th of April until the 2nd of May. Mr. Shaw went up as his legal adviser, and by his recommendation letters were written expressing a readiness to comply with any orders issued by the magistrate. On Monday, the 30th of April, it seems that Captain Little, who was then

escorting treasure to Barrackpore, was applied to by Mr. Ogilvy, to aid him with the military force under his charge, and, on Wednesday morning, the 2nd of May, they arrived at Culna. Evidence will be given to shew that Mr. Ogilvy gave directions that the troops should load with ball-cartridge, and that he had previously said that Pertaub should be taken "dead or alive." At Culna, when the troops were drawn up on the bank, the boats of Pertaub and his people, where in the middle of the river; it was an early hour, no disturbance whatever was taking place, and most of the people were sleeping. Two shots were ordered (*not* by Mr. Ogilvy) to be fired in the air, upon which a slight stir was observed, and somebody was seen to jump overboard. A cry then arose of "maro," "maro," in which the magistrate himself joined, and several shots were fired in succession by the line of soldiery, Mr. Ogilvy had a double-barrelled pistol, and is said to have discharged one barrel. Captain Little ordered the bugle to sound, and the firing ceased. This, gentlemen, is a simple statement of facts, and I shall abstain from all harsh comments, and all attempts to press the case against the prisoner at the bar.

W. D. Shaw, examined by Mr. Leith. I have been professionally engaged for Pertaub Chand since May 1835. Mr. Graham was attempted to be made his attorney last September or October, but my costs not being paid, it went no further than an order. I saw Pertaub at Culna on the 30th of April last. I was requested to go by a native gentleman who took an interest in him. I filed a plaint in ejectment on his behalf in this court. The property belonged to the Burdwan *raj*, and Pertaub claimed it as the person entitled to succeed to the *raj*. The present possessor is a son of Prawn Babu, and he is the adopted son of Raja Tejchunder. The young Raja is a minor. I went to Pertaub in 1837, when he was in jail at Bancoorah. After he was liberated, he lived with Radakissen Bysack, the Dewan of the general treasury. He was offered pecuniary assistance both by Europeans and natives of great respectability. My servants went on before me to Culna. I reached Culna in the evening at nine or ten. I saw Pertaub there on the following day, the 30th of April. I took a walk in the morning. The place did not appear disturbed. I saw no crowds. In the evening when I went on board the Pertaub's boats, I saw Mahaboollah, the darogah of Culna. He had a bundle of papers in his hand. One was a perwannah from the magistrate of Burdwan to disperse the followers of Pertaub. This was read. On hearing it, I said that it was an extraordinary order, but I was sure that Pertaub would send away any person he chose to point out, even to his kidmutgar or hookabhurdar. Pertaub repeated this himself. I spoke myself, and also directed my native writer, Joynarain Chunder to interpret. I think he spoke in Bengalee. The daroga said that he had no complaint to make, nor any orders to issue, and that the proper party to receive the proposal was the nazir. The nazir was called, but did not come, I then requested the moonshee, Hurroochunder, to write a letter to the official authorities at Culna. The letter was drafted, and I think copied and read over in my presence. The fair copy is among the proceedings at Hooghly. I am speaking of the recent prosecution, still pending against Pertaub, before Mr. Samuells. I directed the letter to be given to the nazir. Next morning I went to the factory of Mr. Lyall, my friend. I first wrote an English letter addressed to the magistrate of Burdwan. This was Tuesday the 1st of May. I have seen it in the possession of Mr. Samuells. I returned on the following day. Some natives told me something about what had happened at Culna. I was arrested on my return on a charge of sedition, by Mr. Ogilvy. I recollect speaking about the letter written to the nazir, and Mr. Ogilvy said, "the letter will speak for itself." I am not sure whether it was the letter to the nazir, or my own English letter. I saw Pertaub and several of his followers,

marched to prison under guard. I was myself taken to Burdwan on the Friday. After being in prison a week, I was released under the writ of *habeas corpus* from this court.

Cross-examined by Mr. Prinsep.—I found Pertaub when I first acted for him, in prison at Bancoorah. He had been charged with disturbance and breach of peace. I was with him a week. When he was going to Burdwan, I understood that he went for the purpose of being identified by the Rawnees. He never informed me that he was going to be placed on the guddee. There were about forty boats with men in them. I saw a rather large collection of people on the bank. I have heard since that there prevailed much excitement. I did not know this before. The Rajah Pertaub has given a bond to Radakissen for some thousand rupees, but not for any number of lakhs. I claimed about Rs. 40,000 for costs. The securities were Radakissen. Dr. Jackson and Rustomjee Cowasjee. I do not recollect whether there was anything in the perwannah which I heard read, about arresting Pertaub. I know that an application was made to Government and refused, to give Pertaub safe escort to Burdwan. The darogah did not when he was leaving the boat, ask anything about the answer which he was to take back. I saw a man enter with a *tulwar*, and I suggested to the Rajah that the arms should be removed to my boat. The Rajah gave orders, but it was not done. I was present at the office of Mr. Secretary Prinsep on one occasion, when the Rajah attended, in hope of being recognized by certain gentlemen of the civil service, Mr. Trower, Mr. Hutchinson, and Mr. Pattle. I think he recognized Mr. Trower. I believe he confounded one gentleman with another. After that meeting I took no further step in the ejectment action. Radakissen Bysack pays the costs of this prosecution. There are three indictments, but only two warrants filed. I preferred a charge of murder against Mr. Oglivy before Mr. Barlow. There were several notices of action (perhaps twenty) serving upon Mr. Ogilvy and Mr. Barlow. I was the attorney. My costs in the ejectment action amounted to Rs. 40,000; but the taxing officer cut them down to 7,000. There are no actions that I know of instituted on behalf of Pertaub in any mofussil court.

Re-examined.—There was some dispute about the serving of the notices in the action of ejectment. The actions against Mr. Ogilvy were commenced to recover damages on the part of the owners of the boats at Culna, on account of their detention.

By a juror.—I believe I was speaking at Culna of the English letter, but that Mr. Ogilvy's answer referred to the Persian letter. I do not know this of my personal knowledge. The words "English letter" were not used Mr. Ogilvy said "your letter."

Pertaub Chund examined by Mr. Clarke.—I was arrested on the 21st Bysack three years ago at Bancoorah. I was released from jail after six months' imprisonment. I then went to reside at Calcutta. I went to Burdwan last April, to see my Rawnees and other relations, and get myself identified as the Rajah Pertaub Chund. I presented a memorial to Government for aid and protection. This was refused. I went up to Culna and stayed there seventeen or eighteen days. I wrote to Mr. Shaw and Mr. Graham to come up. I landed one day from my boat. I had a drawn sword in my hand. The nazir remained with me while I was on shore. I was in a Tonjohn. He saw me back into the boat. There was no riot or disturbance on the shore. I saw Mr. Shaw there two or three days before the 2nd May. He came on board my boat. He came again afterwards before the firing. The darogah was once or twice on board. He came on board the second occasion of Mr. Shaw's being there. A perwannah of the Magistrate was read. Mr. Shaw desired the nazir to be called. The purwannah contained an order to disperse the assembly. I wrote a letter saying there was no assembly, but only my

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own servants, Hurrochunder, moonshee, wrote the letter. The nazir was sent for but did not come. Mr. Shaw wrote a letter in English but no other Persian letter was written. I did not see Mr. Shaw the next day. On the second day, after the firing and other occurrences took place, it was very early and I was asleep in my budgerow, I heard first the report of a gun; this awoke me. I know Tarachund Chuckerbutty. He came to me that morning. He served out my meals. He is dead; he was shot at Culna. I saw him struck by a ball. He was hit in the chest, I am not sure which side. He called out, that he was shot. I jumped into the river, and was swimming over to the opposite shore. When I was seen, the sepoys began firing balls at me. I looked round, and, seeing the flashes, I dived. The bullets fell near me. I escaped, but was afterwards arrested. I had about forty-five boats and two hundred men. There were women and children. I know a person called Radakissen Gosaul, my mooktear. He was with me at Culna. I sent him to Burdwan. This was four or five days before the firing. It was to present a petition. Another person went before, named Juggomohun Sing. Deenonauth Sing accompanied my mooktear. I was guilty of no riot or disturbance whatever. A number of people belonging to Prawn Baboo, came there. I cautioned my people not to interfere with them.

Cross-examined by Mr. Morton.—I have never been known by any other name than my present. There was a report that Pertaub Chund died and was burnt according to Hindoo ceremonies. I have heard of this, but it was not true; for here I am. This was a great many years ago. I was taken down to the river side. I jumped into the river and dived. I was not ill, only feigning. The history of my reasons for this is a very long one. I was not on good terms with my relatives. When I jumped into the river there was a concourse of several thousand people present. I was not carried down to the river side. I walked.

Sir J. P. Grant here interrupted the examination and asked how all this was precisely relevant to the question before the court, since even if the claim of this person was rightful, the act of asserting it by force would be wrongful.

Mr. Morton submitted that if the chief witness to prove the lawfulness of the Culna assembly, could be clearly shewn to be an imposter, this must throw a slur upon the whole case. The evidence went to his credibility at all events.

Sir J. P. Grant said that he did not wish to prevent the line of examination taken, but only to suggest its apparent irrelevancy.

Cross-examination resumed.—After escaping, I went to other countries, where I continued to be known by my friends, as Rajah Pertaub Chund. It is only during the last three years that I have re-appeared in that character in this country. I allowed my beard to grow, and passed for a *faqueer* part of the time. I was not then known by any particular name. Anybody called me what they pleased. I was convicted about two years ago of a disturbance and breach of the peace at Bancoorah; but I was not really guilty. I had assembled some people, I was sentenced to imprisonment for six months, and bound over to keep the peace for a year. It was very soon after this time expired, that I went to Culna. I left the house of Radakissen Bysack, with whom I lived in Calcutta, because I chose it, and was tired of living in the same place. I was not turned out. I know that the Burdwan district was excited in my favour. All the country was in my favour. I wrote letters to the Ranee of Pucheet, and to the Rajah of Bishenpore and others. I did not invite the Ranee to come with her attendants to see me reinstated on the guddee. The darogah came two or three times on board my boat, before I saw Mr. Shaw. He showed me perwannahs of the Magistrate. Mr. Shaw came twice on board. The perwannah ordered me to disperse my assembly of followers, but I said that there was no assembly. When I landed, I had a drawn sword in my hand. It came out of the scabbard

by accident, I had then with me fifteen or twenty followers. Some of my men had sticks, but no other weapons. I saw a sepoy of Prawn Baboo's, near the Sumaj Barree. I did not give orders to disarm him. The darogah did not remonstrate. I was not drunk at the time. On board my boats, there were ten or fifteen tulwars or swords, three or four guns, one pistol, and two or three spears. There were no more in mine. There were some in a boat belonging to the Rajah of Hurdhan and others who came to me on a visit. When the firing took place at Culna, my boat was fifty or sixty cubits from the shore. I know Dwarkanauth Tagore by sight, (points him out in Court.)

Re-examined.—I have not seen Baboo Dwarkanauth Tagore for many years until to-day. I recognized him on seeing him. I used to see him when I lived at Short's Bazar.

Edward A. Samuells, examined by Mr. Leith. I was Officiating Magistrate of Hooghly. The original letters of Pertaub and Mr. Shaw are in my possession. (Persian letter produced from Pertaub to the nazir of Burdwan. Persian letter from Pertaub to the same, English letter from Mr. Shaw to Mr. Ogilvy.)

Cross-examined by Mr. Prinsep.—I have been Officiating Magistrate since 1835. I was nearly a year and half in the district of Burdwan. There appeared then to be a good deal of excitement, about the claims of Pertaub, the common people were hostile to the present family, and disposed to assist Pertaub. This feeling was very extended. I was at Hooghly at the period of his conviction for breach of the peace. (Record of conviction put in and proved of Aluckshah *alias* Rajah Pertaub Chund Bahadoor. Also the orders of Government, and certain reports of the nazir and darogah, and other documents.) The reports made by the subordinate officers are made upon their own observation; and upon the receipt of the reports. Purwannahs or orders are made accordingly. On the execution of the purwannah, the officer makes his return or report thereon. When it cannot be executed, it remains in the record-office of the thannah. An interlocutory report is sometimes made, stating that the perwannah cannot be executed and praying further order.

Re-examined.—The reports of the darogah are sometimes written by the mohurrer, or assistant mohurrer. I have heard that the Culna darogah cannot read or write.

Cornelius Smith, was called to prove that one of the documents (an answer to Pertaub's memorial) was produced from the office of Mr. Halliday, the Secretary to the Government of Bengal. The document was an official one and signed by Mr. Halliday and countersigned by the Deputy Governor.

Trial adjourned at half past seven o'clock, P. M.

SECOND DAY, TUESDAY, AUGUST 14, 1838.

The adjourned trial resumed this morning at ten o'clock.

Francis Curween Smith examined by Mr. Leith.—I am superintendent of police for Bengal. (Produces petition of Pertaub to the Governor in Council, the Hon. A. Ross, and a letter addressed by Mr. Halliday to Mr. Ogilvy, received by witness as superintendent of police.) All the Magistrates are subject to my orders and jurisdiction. I addressed a letter officially to Mr. Ogilvy before the Culna affair. I also addressed one after the affair. (Letters put in.) Mr. Ogilvy was bound to investigate the case as a Magistrate, and he had my order besides. When I went to Burdwan, I directed him to continue it. I did not know Mr. Ogilvy in the slighest degree personally. I have also been subpœnaed to produce some papers delivered to me officially by Captain Little.

Edward A. Samuells, again examined.—I have in my possession a petition from one Radakissen Ghosaul for leave to file a mooktearnameh on behalf of Pertaub.

Cross-examined.—I have had delivered over to me officially, the arms stated to have been seized at Culna. They were

delivered to me in June by Mr. Shaw, the then Officiating Magistrate of Burdwan. I have a list of them, drawn up by the nazir, when counted over in my presence. I could state from memory, having seen them counted.

Mr. Clarke objected unless the witness had counted them himself.

Mr. Prinsep.—Can you state about how many from your own observation.

Witness.—There were ten guns and three pistols and about ninety-seven swords, and eight or nine spears, a few daggers, several lattees or clubs and a few miscellaneous weapons. This is to the best of my recollection, from my own observation. Altogether some 390 stand of arms. Of the men in custody, 170 are fighting men by profession. It is by no means an essential qualification that the darogah should be able to read or write. The mohurrers are kept for the purpose. A return in the hand of the mohurrer, and sealed with the thanna seal, is received as an official document, and as evidence in the mofussil courts of justice.

Re-examined.—There were 310 men sent down in custody from Burdwan. Some are in jail, others out on security. A very few were manjees or boat-men.

William Nelson Hedger, examined by Mr. Clarke.—I have been twenty-three years in this country. I have been frequently at Burdwan, with the last ten months. Prawn Baboo, has great influence there. I have heard from Mr. Ogilvy that he believed all the native officials there were under his influence. He assigned no other reason than his great wealth. I was at Burdwan when Mr. Shaw was confined, and on the day when he was liberated. He underwent a long examination before Mr. Ogilvy. Two or three letters were spoken by Mr. Shaw, one written by himself to the Magistrate of Burdwan, another written in Persian by his directions. Mr. Ogilvy said, "I have your letter." Mr. Shaw said, "I do not mean that letter, I know you did not receive it. Mr. Mellis has that, I mean, a Persian letter, which you told me would speak for itself." I believe this was not written down. Mr. Shaw seemed to be a little angry, and said "I insist upon this being taken down." I heard the examination read afterwards, and I believe this was not in it. Mr. Mellis is acting or assistant collector of Burdwan.

Joynarain Chunder, examined by Mr. Leith.—I am a head native in Mr. Shaw's office. I went up to Culna in April last. I saw Pertaub Chund there on Monday the 30th April in his budgerow. I went to inform him that Mr. Shaw had arrived. We went at dusk in the evening, on board. The darogah was there. There was a good deal of conversation. Mr. Shaw asked him, how he had got so fat. The darogah produced a purwannah, and desired that it might be read. It was read. It directed the assembly to be dispersed. The Rajah said he had no assembly, but only his own servants. Mr. Shaw said to the darogah, "see if there is any assemblage." He said "the nazir is the principal person." Somebody was sent to call the nazir, but he did not come. The darogah said that he made no complaint. A Persain letter was written by the moonshee, addressed to the nazir. I remained Mr. Shaw went away after this letter was drafted. I delivered this afterwards to the nazir. The nazir read it, and said "very well, I will send it." This was in the darogah's presence. I was accompanied by Hurrischunder, moonshee, and two other persons. The day after, I was told at the thannah that another purwannah had just come ordering the Rajah to be taken to Hooghly. This was not read. The darogah said that he could not act without the order of the Magistrate. Mr. Shaw wrote a letter to the Magistrate of Burdwan. I went to deliver this to the nazir, but he would not receive it, because it was an English letter, by an attorney, and he had no orders. I sent to the Magistrate. Mr. Shaw went to a factory three or four coss from Culna. I remained at Culna, until the next day at noon. That morning I was in Mr. Shaw's boat, and about half past four I was awoke by my servant

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who told me the sepoys were come. The sepoys discharged muskets. Most of the people to the boats were asleep. After the firing, Mr. Ogilvy came on board Mr. Shaw's boat. He had a double-barrelled pistol in his hand. He asked me where Mr. Shaw was. I said, "he had gone to the Pygacha factory." He appeared to be angry. He examined some of the papers in the boat. I fled that day, and came down in a boat to Calcutta. I saw no multitude of people at Culna, only in tens and twenties. It is a very populous place and has much trade. It is customary for merchant-boats to carry tulwars. I have been on a pilgrimage. I had twenty-four or twenty-five men with me. I do not think that Pertaub's train was disproportioned to his assumed rank.

Cross-examined by Mr. Morton.—This is the letter written by Mr. Shaw (letter produced.) The peon to whom it was given was not regular a runner. I cannot tell when it arrived. The whole of the purwannahs was read: Mr. Shaw understood most of it, and I explained the rest. I did not explain anything about *arresting* the Rajah or taking him to Hooghly, because it did not contain that. When I heard of the other purwannah at the thannah, I did not mention it to the Rajah nor to Mr. Shaw. I was not told to mention it. I did not forget the circumstance, but I had no reason to consider it sufficiently important. I went into the Rajah's boat and Mr. Shaw's that evening, but I did not see them. I saw Mr. Shaw the next morning. I do not know whether there were any purwannahs before. I should not know the purwannah if I saw it again. I did not read it myself. There were bonds and other papers in Mr. Shaw's boats. I do not know whether any of these bonds were from the Rajah to Radakissen Bysack. If you show me one, I will tell you. I cannot say for what purpose they were brought upon that expedition. I am one of the persons now charged at Hooghly with being accessory to a disturbance and breach of the peace. I am now at large on security.

By the judge.—I saw the prisoner while I was at Culna, not before the time when he came into the boat after the firing.

By the juror.—I had not the purwannah in my hand, nor was I close enough to see it, so as to recognise it.

Hurrochunder Ghose, examined by Mr. Clarke.—I am in custody of the mofussil police, I was arrested on the 21st Bysack (the 2nd of May) at Burdwan. I was liberated on security, on the 16th of July, I was again arrested on the 27th, presented a petition to the Magistrate to come down to Calcutta. I know Pertaub Chund. I am his moonshee. I accompanied him to Culna. (A letter shewn, purporting to be to the nazir.) I wrote this at Culna, and Joynarain took it, and went with me to the nazir. This was after dusk on the 30th April. The nazir read it and said that no answer to it was required. The nazir and darogah had been that morning on board Pertaub's boat. The nazir put a purwannah into his hand. He said that he had not eaten his victuals that morning. Pertaub said his vakeel would come in the afternoon, and the nazir might then return. The nazir never come again. The darogah came that evening. I wrote the second letter that day. I generally wrote the Rajah's letters. No one else did. He had one pinnace, seven or eight budgerows, and three of four rowing boats. There were lists of the boats and of the men. These were seized and are at Hooghly. While I was at Culna, the Rajah went once on shore, in a tonjohn. There was no riot or noise, any disturbance while I was at Culna. Between Monday evening and Wednesday morning, neither the darogah nor the nazir came on board. The Rajah had sixty or seventy burkendazes with him. They mounted guard, but they were not all armed. They guarded his boaats containing birds, music, women, &c.

Cross-examined by Mr. Prinsep.—(Four letters shewn.) The first is not the Rajah's, it purports to be the writing of of Radakistno Ghosaul's, the Rajah's

mooktear. He is the mooktear, who was sent to Burdwan; it is not his hand-writing. The second letter is in my hand-writing, and signed by the Rajah, and was written at Santipore. I know Ram Bux Tewarry. He used to go on errands. The third letter is in my hand-writing. The writing on the outside is not mine; I do not know whose. This letter was written at Calcutta, before I left Calcutta. The direction is mine. The fourth letter I do not know. I do not know whether these were given to Ram Bux Tewarry. All the Rajah's papers were kept in the dufterkhanah boat. I heard nothing about the taking of the Rajah to Hooghly. I was at the thannah with Joynarain. The darogah had brought and shewn to the Rajah two or three purwannahs before. One related to the dispersion of the people. This was five or six days before the reading of the other purwannahs in the boat. To this the Rajah made answer that the people were his own attendants, and could not be denominated a concourse assembled to make a disturbance. The Rajah did not dismiss any of his people, but sent a mooktear with a petition to Burdwan. Those persons who are in the jail at Burdwan, were the persons in the Rajah's service, except four or five who happened to come to bathe on the morning of the 2nd May. We were going to Burdwan to identify the Rajah among his relatives and then to adopt measures for recovering his property. He was not going to seat himself on the guddee. There is nothing about that in the letters I wrote. The Rajah ordered his sword to be brought. When he landed he had it drawn as he walked on the bank, not all the time. When he was coming back, he returned it to the sheath. Some others had swords. I saw a sepoy at the Suntaj Barree. The Rajah did not give orders to disarm him. I should have heard it, if given. There would have been a halt.

There was no firing of guns nor beating of drums, but there were large crowds of people on the banks. Bamboo fences were put up by the darogah to prevent people tumbling in.

Radakistno Ghosaul examined by Mr. Leith.—I am a mooktear of Pertaub. I was at Culna in April last. I went to Burdwan by his directions. I saw Mr. Ogilvy in his cutcherry. I took a durkhust with a mooktearnamah from the Rajah. He said that he would not accept them, but that I must go to the judge. I said the Lord saheb had written to afford protection to the Rajah and it was incumbent on him to receive them. He told me to make out a petition in my own name. There was no stamped paper there, and this caused a delay, and by the time it was obtained, the cutcherry was shut and Mr. Ogilvy gone. On the Monday following as I was going in a palkee along the street, I was met by Mr. Ogilvy, Mr. Shaw, Dr. Cheek, and a mooktear of Prawn Baboo's. They were in a carriage and alighted. They stopped the palankeen, and examined my papers. I was then arrested and pinioned.

Cross-examined by Mr. Morton.—I did give three letters once from the Rajah to Ram Bux Tewarry. I do not know what they were about. I should not know them if I saw them. One was to the Gosein of Beroor, I think one was to the Ranee of Pucheet. I am one of those charged at Hooghly. I am now at large on security.

John Allen was called to prove the jurisdiction.

Bheek Sing, subadar, examined by Mr. Clarke.—I am a subadar in the 3rd regiment. I was at Culna on the 2nd of May. I was coming from Byoonchee, where we were escorting treasure. There were two officers with two companies of sepoys, each eighty in number. I did not know Mr. Ogilvy by sight. Two gentlemen came, and I heard from the captain that one was the doctor and the other the Magistrate. Byoonchee is six or eight coss from Culna. We reached Culna at three in the morning. Captain Little ordered us to load with ball. Five gentlmen were then present, the two officers, the Magistrate, the doctor, and a padre, and

all were standing close together. After we had loaded, we proceeded to the bank. The captain told us, that a great many people were assembled there, and that he expected there would be a battle, and that we were to be upon our guard. The companies were drawn up in long line, double files, eighty in the front rank, eighty in the rear. This was along the bank of the river. It extended 6 or 700 paces. I stood on the left flank of the first, and on the right of the second; between both, I saw no people on the banks. I saw fifty or sixty boats. It was said that the Rajah and his people were in them. The few people that were visible when we arrived got under the roofs. The captain took fifteen of the grenadier company, and fifteen of the light company, and proceeded to the left with them. He went on, till he came opposite to where the budgerows were, and all the gentlemen were with him. They were about three or 400 paces from me. Two small dinghies put off from the middle of the stream. The burkendauzes called out to them to stop. One stopped, the other did not. I heard a small report first, then several muskets in succession, to the number of about fifty. I saw no commotion or disturbance among the boats. I heard an order given "maro," "maro," preceding the firing. How could it take place without an order? This came from the place where these gentlemen were. I heard the cry, "golee maro woosko," I was not near enough to hear who spoke. The firing stopped when a bugle was sounded, "cease firing." The captain then ordered two havildars to proceed with two sections of sepoys to the other side of the river. The river was very broad. Arms were found in the boat, swords and clubs. The people were taken prisoners.

Cross-examined by Mr. Prinsep.—The line was drawn up some space from the edge of the water. The police people were standing behind us, when the firing commenced, and none were before. Some were alongside, on the left, when they cried out to the boats to stop. They were where the gentlemen were standing. I would not have fired without the order of the officer. The officer's order to fire is given in Hindoostanee. The word "fire" is now never given, it is "jeet," (present.) When successive or running shots are to be fired, an oder is given beforehand for *file firing*. After that there is the beat of a drum. If there is no drum, it may commence by word of mouth or by a bugle if there is a bugle. I was examined before at the police office. I cautioned the men not to fire. This is usual. When the second firing took place, the captain ordered me to go to the left and forbid it, I did so. I cannot tell who gave the order "maro."

The trial was adjourned at a quarter before eight o'clock P. M.—*Hurkaru, August*, 17.

WEDNESDAY, AUGUST 15, 1833.

THIRD DAY.

The trial recommenced at nine o'clock.

Lauchlan Alexander Maclean, examined by Mr. Clarke.—I am an ensign in the 26th regiment N. I. I know the prisoner. I was at Culna on 2nd of May, with troops. I saw Mr. Ogilvy about sixteen miles from Culna, at 6 in the morning. He wished Captain Little to march to Culna. There was a letter before from Mr. Ogilvy to Captain Little. I left at five in the evening with Mr. Ogilvy. The latter had remained at that place since the morning. I do not recollect the name of the place. We reached Culna about twelve o'clock at night, or one in the morning. I saw the troops at Culna about three o'clock. The number was from 130 to 150. They were then remaining a short distance out of the village. With them were Captain Little, Mr. Ogilvy, Dr. Cheek, and Mr. Alexander. Captain Little ordered the sepoys to March to the river side. Previously to that Captain Little asked Mr. Ogilvy whether Pertaub Chund was to be taken dead or alive, and Mr. Ogilvy said yes. (The witness added "if" or

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some other words, in this answer after the words "dead or alive;" but upon being again questioned, he said he had recalled the word, and that he did not add "*if he attempted to escape*," but checked himself before doing so. Upon further questioning, the witness said, that if he added the words, he did not intend it, that in fact Captain Little did not say the word, though it was so reported afterwards.) Captain Little ordered the troops to load at the *choke*. The order was given in English "prime and load." This implied to load with ball-cartridge. They loaded with ball. Mr. Ogilvy could have heard the order at the time. When the troops reached the river side, they filed along the shore. The length of the line was 2 or 300 yards perhaps, but I am no judge of distance. I saw some natives on the shore, they began to collect; but there was no great crowd together. There were boats in the river, and alongside, and they appeared crowded with people moving about. Captain L. called out in Hindoostanee, but I do not understand enough to know what was said. I then went to my company to a different end of the line. Previously to that I heard nothing said by Mr. Ogilvy. There was firing. When I reached my company I was about fifty yards from Mr. Ogilvy. Before I reached the end the firing commenced. I heard one musket fired, and shortly after, several others. The single musket was fired rather to the left of the centre; the other shots were a running fire along each side. About twenty or thirty muskets, I believe, were fired. I saw somebody go on board the boats, but I do not remember whether it was after or before the firing. The bugle sounded "cease firing." Captain Little then went on board. There was a search for arms made by Mr. Ogilvy. I saw some collected on the bank. There were swords, shields and clubs. No resistance was offered in my sight. I see no riot. Mr. Ogilvy had a double-barrelled pistol.

Cross-examined by Mr. Prinsep.—It is a very short time since I joined the Bengal army. This is the first time I was on active service. We were escorting twelve lakhs of treasure, when we were called away. I followed my superior officer, of course. Whatever orders were given, were given to Captain Little, and he can best speak. There was no medical man of our corps. Dr. Cheek was there; he came from Burdwan. The order to load was given; we had no blank cartridge. I do not know whether sepoys will obey any other order than one of a military officer. I saw a letter from Mr. Alexander to Dr. Cheek. I cannot say whether the firing commenced accidentally or otherwise. I heard no order given. Captain Little was close to where the first shot was fired. I heard no signal to fire by bugle.

By the judge.—I heard no persons call out anything before the firing.

Baboo Tewarry, examined by Mr. Leith. I am a sepoy in the 3rd regiment N. I. I was with my company at Culna on 2nd of May. We were on the bank of the river early that morning. I was on the left side of the line in the light company. We came along in sections. I saw boats and budgerows in the midstream. A boat was proceeding, and not attending to the prohibition to proceed, the Magistrate fired a pistol at the boat. I was at time moving up to the line, which was not completed. I was passing close by the Magistrate. At the time that the pistol was fired, every body was talking. The Magistrate, the darogah, the nazir and others were calling out "maro," "maro!" After the order to fire with ball, the muskets bagan firing. The Magistrate and the other gentlemen gave the order to fire with ball. The people in the boats were sitting out. There was no kind of riot or disturbance. I did not go into the boats. Forty or fifty muskets were fired, when the bugle sounded to cease firing. I saw about twenty or twenty-five old broken swords. There was a second firing after the first had ceased on the sound of the bugle. This second firing took place on the Rajah's jumping into the river. The gentlemen, that is the

Magistrate, the captain, and the rest, cried out "the Rajah is escaping, *golee sa maro*." This was the occasion of the second firing; ten or twenty shots were fired by the sepoys. The gentlemen talking the muskets out of the hands of the sepoys also fired. It ceased when the Rajah got over to the other side out of reach. He was afterwards arrested, with several men.

Cross-examined by Mr. Morton.—By the "the gentlemen," I mean the Magistrate, Captain Little, Ensign Maclean, Dr. Cheek and the Padre Alexander. *They all took muskets and fired.* I saw the *Padre* fire! When the Magistrate fired, he gave his pistol to a servant to hold, who fired also. The pistol-shot fired by Mr. Ogilvy was the first shot I heard fired.

Khoda Bux, examined by Mr. Clarke.—I am a havildar. I was with my company at Culna on the 2nd of May. Mr. Ogilvy was there. Early in the morning, we went to the banks of the river. Captain Little told the sepoys, that they must be careful, because the Rajah was present with many armed men. The troops were ordered to draw up in two lines or ranks. The length was about 400 paces from one extremity to the other. I was in the middle of the line near the captain. I saw fifty or sixty boats in the river. We had extended to the right and left opposite the boats. The boats were forty or fifty paces from us. Nobody called out to the people in the boats in the middle; but when the boats near shore were moving off, they were told not to go. Upon a dinghy in the midstream moving away, orders were given to fire ball, to frighten them. The order was to fire in the air over the boats. Upon this, three or four shots were fired. But upon this having no effect in stopping them, orders were given to fire upon them, that they were taking away the Rajah. The Magistrate was about seven paces from me. He was moving about, giving directions, and arranging matters. The order was "maro," and then balls were fired. Fifty or sixty muskets were discharged. The bugle sounded and the firing ceased. After that I know of no other firing, for I then went by the captain's orders to the other side. I arrested the Rajah. I saw sixty or eighty weapons, chiefly swords, two or three guns and one pistol. One gun was rotten, another was an English double-barrelled. The swords were native six-anna tulwars. The troops loaded with ball before leaving Culna, by the orders of captain. Mr. Ogilvy was present.

Cross-examined by Mr. Prinsep.—I am an old soldier, and I have been in some battles. Sometimes we fire with word of command, but if the enemy come suddenly, we do not wait. I did not hear what directions were given to the nazir and darogah. My duty was to attend to my commanding officer. I did not see the padre fire; but he may have fired.

By the judge.—I was standing seven or eight paces from the gentlemen behind them when the firing took place. All five were together, until Ensign Maclean went away to the left. The Ensign went away after the firing commenced. I did not see the Magistrate fire anything. I was looking sometimes to the right and sometimes to the left. The order was given by the captain to fire overhead, when the boats were in the midstream. Three or four muskets were then fired. Afterwards, when the boats got close to the others in the midstream, the Magistrate said "maro." He also said, that the Rajah was getting away in the boats. I distinctly recollect hearing the Magistrate using those words. I do not confound what the Magistrate said with what the others said, because the voices of natives is very different from that of Europeans. The other Europeans were not standing close to the Magistrate. Upon this being said, the balls were fired. When the other was given, the Rajah was in the boat. No one else gave an order. There is some difference in the account which I now give, and the account I have given before, because I only speak to the questions put to me. The questions are not the same. I do not recol-

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lect, whether I said that the captain joined in the cry, "maro." He did *not* join. I never said at the police, that we would not have fired on the orders of Magistrate.

By a juror.—I saw a pistol in the hand of the Magistrate, but no musket.

Gourdeen Doday, examined by Mr. Leith.—I am a sepoy in the 3rd N. I. Last May I was at Culna. I was with my company early in the morning. I saw Mr. Ogilvy, the Magistrate of Burdwan, there. He was moving about. I saw boats and budgerows in the river. There was firing upon the orders of captain and Magistrate. A boat was coming from the eastward, which was forbidden to proceed to join the budgerows. It went on, and the Magistrate said in Hindoostanee "fire at the *banchoots*, they will not obey orders." Upon that ten or twenty balls were fired. The captain then caused the bugles to sound "cease firing." Before this, there was no firing. The captain gave no orders until the boat disobeyed. He then said, "fire at them with ball; they will not obey orders." The Magistrates was four or five paces on me.

Cross-examined by Mr. Morton.—There were no muskets fired before the ten or twenty of which I spoke. I have always given the same accounts of this transaction. At the police office, I only answered to the questions put to me, and I do the same here. I do not recollect having said that any muskets were first fired in the air. (After some prevarication the witness confessed, that an order was first given by the captain, to fire three or four muskets in the air, and that he had stated this at the police.) There was no interval between these discharges and the ten or twenty muskets. I do not know whether the first three or four were aimed at the boats or fired over. The Magistrate was not standing in front of us; if he had, he might have been shot. (The witness was asked whether he had not said at the police office that all the European gentlemen were standing together; this he at first seemed to deny, but after some shuffling, admitted.) I suppose all the others must have heard the Magistrate give the order "maro." I saw the Magistrate with the pistol in his hand. I did not see him with a musket. I did not see him fire the pistol. I did not see the padre or the doctor take a musket and fire on the boats.

By the judge.—Immediately upon the three or four muskets being fired, the other ten or twenty were fired; there was no interval. The captain gave orders to two or three to fire overhead, and, immediately after, the general order to fire was given. The captain did not join in this second order. (The judge remarked that this was a contradiction of himself in express terms.)

Dwarka Sing, examined by Mr. Clarke. I was at Culna with my company on the 2nd of May. We were in line. I was in the centre. Some boats were moving on the river. The Magistrate desired them to be brought to the shore. The captain, the lieutenant, (ensign) the doctor, the Magistrate, and the padre, were all together. An order was given, when the boats would not obey the orders, to fire at them with ball. The Magistrate fired his pistol. About forty muskets were discharged. The bugle sounded to cease firing. After that five or ten muskets were fired on the right. The bugle did not sound again. There was no riot, and no resistance offered. There may have been 250 or 300 police people, and chuprasses altogether.

Cross-examined by Mr. Prinsep.—I did not see the pistol fired. I said so at the police. (This is different from the deposition taken.) All the gentlemen were together, ten or twenty paces from me on my right, I should have got into trouble, if I had fired without orders. There were vacant spaces between the sepoys in front of the Magistrate. He aimed between the sepoys, through these spaces. I saw him. The captain gave the first order. I attended only to his order.

By the judge.—No other person gave the order, but the captain.

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Golaum Hyder, examined by Mr. Leith. I am a havaildar in the 3rd regiment. I was at Culna on the 2nd of May with my company. We were in line on the banks of the river. Mr. Ogilvy was there. There were five gentlemen. The Magistrate was moving backward and forward. I heard firing. The shots were first fired by order of the captain. He told them to fire over two boats making off. The Magistrate said "maro." Several shots were fired. The firing ceased when the bugle sounded. I saw, afterwards, some guns and broken swords; I saw a man in the boats who was shot through the chest. I do not know his name. I afterwards heard that he was a Brahmin. The man was still alive.

Cross-examined by Mr. Morton.—I heard the Magistrate give the order. The captain gave an order to fire two guns over, to the sky asmanko). I gave the same account at the police office. I did then say that the Magistrate said "maro." (There was nothing said about the order of the Magistrate, in this witness's deposition at the police.) I also stated at the police, that Mr. Ogilvy said, the Rajah is escaping, follow me to the boats. After the two shots were fired to the sky, I heard no other order given. I saw the Magistrate with a pistol, but I did not see him fire it. I did not see him take a musket or fire.

Captain William Little.—(not examined in chief.

Cross-examined by Mr. Prinsep.—I command the detachment at Culna. I was called upon by the Magistrate of Burdwan, to give aid. I was escorting treasure to a large amount. I have a letter, which I then received from the Magistrate, Mr. Ogilvy. In consequence, of this I halted. Mr. Ogilvy joined me at Byoonchee. I proceeded to Culna in the evening. The troops were drawn up on the banks of the river. A firing took place. I should say, decidedly, that the firing was the consequence of a misapprehension of the orders on the part of the sepoys. No body, to my knowledge, or in my hearing, gave any orders to fire at the people in the boats. I never heard Mr. Ogilvy give any orders to the sepoys. I understood from Mr. Ogilvy that his intention was to arrest Pertaub and his followers. I apprehended that there was a great probability of resistance being offered. I did not see the Magistrate fire a musket or pistol, nor Mr. Alexander, nor Dr. Cheek. The first time I met Mr. Ogilvy after the firing, he expressed his regret. The transaction displeased me very much. I took the sepoys to task. Between 90 and 100 arms, chiefly swords, were taken from the sepoys, who had taken them from Pertaub's people. This was besides the weapons taken by the burkendauzes. I took a *seik chueka* (a sharp disk) among the weapons. I delivered 337 prisoners over. Nearly 300 were fighting men. After Pertaub was in my tent, a prisoner, there was a large concourse of people. Some 30,000 between twelve o'clock and sun set. There were great crowds on the march with him to Hooghly. I heard no cry of "maro, maro," before the firing. The running shots followed the first two immediately. I believe this arose from a misconception of orders.

Re-examined by Mr. Clarke.—There may have been a cry of "maro" after the firing. There was a caution given to the boats, not to move off. The crowds did not attempt to rescue, but they were rather insolvent. The fighting men were of various castes. About thirty were body servants of the Rajah. They were under my charge about five days, and none of them denied belonging to Pertaub. I am not aware that any inquiry was instituted as to the breach of military discipline on the part of the sepoys in firing without orders. The firing was from mistake.

Muddoosoodun examined by Mr. Leith. I am a doctor. I went to Culna last May. I saw Tarrachund Chuckerbutty; he had been shot in the left breast, and was in a very dangerous state. I saw him at the padre's school on the 4th of May. It was by the order of Dr. Cheek.

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He died on the 20th of May. He died in the hospital of Burdwan.

Cross-examined by Mr. Morton.—There is a regular European surgeon attached to the hospital. His name is Dr. Cheek. My reports are regularly made to him. I made my reports to him in this case. I was not present at the moment that he died; nor was I present at the *post mortem* examination. The body was opened and examined by Dr. Cheek.

By the judge.—I was not present when the body was opened by Dr. Cheek. The man told me, when he was in a dying state, that he was wounded at Culna. I do not think he had then any expectation of recovery.

Sir John Grant said that he thought Dr. Cheek must be called, as the best evidence procurable must be given by the prosecution of the death, and of all facts to be determined.

George Nicholas Cheek, called, examined by Mr. Clarke.—I am the civil surgeon of Burdwan. Terrachund Chuckerbutty was in the hospital there last May. He died on the 20th instant of a gun-shot wound on the left side below the collar-bone, breaking the second rib, passing through the upper lungs, and going out at the back, breaking the blade-bone. I examined the body after death. I have not the slightest doubt of the cause of his death. He received the wound at Culna on the 2nd of May. I saw him fifteen minutes afterwards.

Cross-examined by Mr. Prinsep.—I accompanied Mr. Ogilvy officially from Burdwan. I was aware that no medical man was with Captain Little's party. It was in consequence of this circumstance that I was taken. At Byoonchee we fell in with Captain Little. I heard Mr. Ogilvy say that there were 250 men at Culna, and he required Captain Little's assistance in apprehending them. He said, "I think they will resist the police, but with the military there will be no resistance," or words to that effect. At Mr. Alexander's house we had a conversation, at which Mr. Ogilvy, Captain Little and myself were present. I had written a letter to Mr. Alexander by the directions of Mr. Ogilvy. I received an answer to this, which answer was delivered to Mr. Ogilvy. This took place through me, because Mr. Ogilvy wished it to be kept secret from his darogah and nazir. (These letters were put in and proved.) When we went to Culna, we first went to the thana. The nazir spoke to Mr. Ogilvy but I do not know what he said. About half an hour or more after we arrived, the detachment came up. This was about midnight. About day-break we went to the *choke*. Before that, Mr. Ogilvy said to Captain Little, "I shall call upon the *soi disant* Rajah to surrender, and tell the men to lay down their arms; and I shall then send the darogah to apprehend them. That failing, I shall make the matter over to Captain Little." After the firing I saw the nazir. The darogah and some of the police were there. A few minutes after the troops were drawn in line along the top of the bank, I heard some persons bawling out. I was too far off to hear the words, or to see the persons. I was a considerable way to the left of the line; Mr. Alexander was with me. Captain Little and Mr. Ogilvy were on my left. I am speaking as I stood, facing the water. The Magistrate was too far from me to hear what he said, I saw the darogah stepping from the bank into a boat. I heard one musket shot at the end of the line. Soon afterwards, two more shots, then running fire down the line. After this I saw three or four men swimming, at whom some shots were fired. The bugle did not sound until the end of the firing. After the firing, Mr. Ogilvy said when I met him, "how very unfortunate the firing was! I never gave any order." It was not then known that any one had been hurt. Mr. Ogilvy had a double-barrelled pistol belonging to Mr. Barlow, the judge of Burdwan. Mr. Barlow at his house gave one to Mr. Ogilvy just before we set out, and the other to me. I handed it to Captain Little with all the powder, caps, and balls. Both were loaded by Mr. Barlow. Mr. Ogilvy's

pistol was not discharged to my knowledge. I have frequently heard Mr. Ogilvy express a disinclination to employ the military. In consequence of a note which I received on a slip of Bengalee paper from Mr. Ogilvy, I went to him, and found him and Mr. Shaw together, Mr. Ogilvy showed me a letter from Captain Harrington. Previous to this, I was not required by Mr. Ogilvy to attend him to Culna.

Re-examined by Mr. Clarke.—I have heard that Padre Alexander was once in the artillery. I should have been surprised, however, to have seen him take a musket. I did not see the boat push off, which the darogah was getting into. Captain Little gave the order to load. We were then standing all together in the choke. I do not know whether any was sent to summon the Rajah to surrender before the firing. I do not know whether Mr. Ogilvy examined any one upon oath. I saw no great crowd upon the boat before the firing, and no tumult or disturbance.

Mr. Clarke now proposed to read the following documentary evidence put in:

The memorial of Pertaub Chund to the Hon. A. Ross, Deputy Governor of Bengal, for aid and safe escort to Burdwan. The minute upon this, refusing the prayer of the petition.

Mr. Halliday's official letter to Mr. Ogilvy forwarding a copy of the memorial, and preparing him for the possibility of disturbance.

The two letters written by Pertaub Chund to the nazir and darogah. These were objected to, on the ground, that it did not yet appear, that they had ever reached Mr. Ogilvy himself before the transaction, and that they could not therefore be identified with him, until some ground was laid for the presumption, that they had influenced this conduct. On the other hand, it was submitted, that these letters were admissible evidence at all events: that, in the first place, there was sufficient evidence to go to the jury of the fact of their receipt by Mr. Ogilvy before the transaction, and that, secondly, even without such presumptive proof, the letters were evidence to show, that Pertaub was not acting in disobedience to the orders of the Magistrate. *Sir John Grant* thought, that as part of the case related to the question of the legality or illegality of Pertaub's acts and intentions, the letters were clearly admissible in reference to that matter.

The English letter written by Mr. Shaw to Mr. Ogilvy, was not tendered, and it was admitted not to have reached Mr. Ogilvy until *after* the Culna transaction.

This closed the case for the prosecution, and the Court then adjourned about eight o'clock P. M.

FOURTH DAY, THURSDAY, AUGUST, 16.

THE DEFENCE.

The adjourned trial re-commenced at ten o'clock this morning.

Sir J. Grant asked the prisoner whether he had any thing to say in his defence as his counsel were not permitted to address the Court on his behalf except on points of law.

Mr. Ogilvy said, that he had written out an address, which he was afraid he was unable to undertake the exertion of reading, and he hoped the Court would allow a friend to act as his substitute.

Sir J. Grant said, that the Court would willingly allow the address to be read by any gentleman whom Mr. Ogilvy might choose to name.

A. E. Samuells Esq. C. S. was then named by Mr. Ogilvy and read the following address.

My Lord, and gentlemen of the jury.

After all that has been said and published respecting this unhappy affair at Culna, singled out and pursued as I have been by every kind of charge, I yet owe to my prosecutors, whoever they be, my thanks for this opportunity of bringing the whole matter to a public judicial investigation. The result I trust will satisfy not only you, gentlemen of jury, whom it is my first object

to convince, but the Government and the public at large, that throughout the whole transaction, I did nothing but what my duty as a Magistrate, and the official orders and reports on which I was bound to act, compelled me to; and that even the misapprehension of order which Captain Little has deposed to and which led to all the mischief that ensued, is one for which I can in no sense be held responsible, either legally or morally.

I presume there are few of you gentlemen, who are ignorant that the duties of a mofusil magistrate are far more varied and more anxious than those of an English justice of the peace; that his authority is to be exercised over a far greater space, his responsibility far more serious; and that his neglect of duty would probably induce not *local* inconvenience, but general danger and confusion; yet, even in England where all is well ordered under domestic tribunals, with a numerous magistracy always at hand, tumultous, and still more, armed assemblages of people may be put down and dispersed by the magistrate in person without any formal warrant; and in case of disobedience, he may resort to force to disperse or arrest the refractory, and should, death ensue, the magistrate would be liable to no charge, even of man slaughter. His Lordship will tell you that such is the law of England and will further inform you that a state of active riot or disturbance is not necessary to give the magistrate such authority, but that the existence of an assemblage of persons sufficient for the purposes of terror and intimidation is quite enough to authorise the magistrate to act. Such, too, is the law of all nations where civil policy prevails. In no place is such power more necessary to the magistrate than in provinces acquired and held by conquest; where every local affray may swell out into general tumult, and speedily assume the character of sedition or rebellion. Some of you, gentlemen, may, perhaps, recollect, as a case in point, the affair of the Moulvees in the neighbouring district of Baraset, and there are not wanting many similar instances.

You have it in evidence, that I was magistrate of the popular district of Burdwan, the residence of the most powerful zemindar under the Companys dominion, whose possession, extend far and wide over that and the adjoining Zillahs. You have heard that the present zemindar is an infant, an adopted son of the late Rajah Tejchunder, still under the tutilage of his natural father Prawn Baboo, whose administration of these vast possession has rendered the family unpopular in the extreme. You have heard that a pretender to the raj started up as it were from the grave, under circumstances marvellous even to the absurdity, but not the less likely on that account to excite the passions and credulity of such a population. That he appeared in Bancoorah in 1835, in the character of a faukeer, and gathered a tumultuous rabble about him, with which he paraded the district, and but for the decisive conduct of the magistrate, would have spread confusion throughout the whole country That he was arrested, tried, and convicted. The record of conviction has been produced and will he read. You will fined it to have been for the same offence of tumultuous assemblage and resistance to the constituted authorities for which he was arrested by me at Culna, and is now taking his trial. He underwent his sentence of six months imprisonment, and was discharged on recognizance and sureties of the peace for twelve months more. That period had scarcely expired, when you find him at Culna, with a fleet of forty or fifty boats, and a retinue of people armed and unarmed, stated, by himself, in his letter to the nazir, to amount to 342, of whom no less than 170 confess themselves to be fighting men, and owed his intended progress to Burdwan for the ostensible purpose of procuring evidence in his identity but, as it would seem from intercepted letters to the neighbouring Rajahs and

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Zemindars, with the real purpose of seating himself on the guddee of the raj, on which he invites them with their followers to see him re-instated.

Gentlemen, you will not suppose that the public authorities could sit idly by while such doings were in hand. You have already before you the minute of the Deputy Governor of Bengal upon the pretender's application, with the orders of Government to myself thereon; a previous order had been received by me which will also be laid before you, as well as the letter of the superintendent of Police, the perwannas or warrant issued by myself, the returns or reports, at first of the darogah, and, ultimately, of the darogah jointly with the nazir, whom I had been obliged to despatch to the spot. You will fine that my orders in the first instance were to prevent the invasion of the district by this disorderly concourse, and, afterwards, to disperse them. Those orders being reported to have been set at nought, my last perwannas were to disperse them and arrest the pretender. Ooe of these orders is that which has been served in the presence of Mr. Shaw; you will judge whether it has been truly represented.

The last report received by me on the 30th of April, apprizing me of the continued contumacy and resistance to both darogah and nazir, and that the arrest could not be made without blood shed or even loss of life. This also you will have before you. I had scarcely received it when a communication reached me from Captain Harrington, assistant under Captain Wilkinson, the political agent for Manbhoom, which likewise shall be presented to you. Its alarming tenour determined my proceedings. After consulting with the other official gentlemen of the station, I wrote to Captain Little to halt his treasure party, joined them myself at Boinchee, and, having their received a communication from the only European gentleman resident at Culna, which *confirmed* the former reports, I proceeded to that place as you have heard deposed.

Before adverting to the evidence of the transaction itself, allow me to request your attention to a mis-statement in the opening of the counsel for the prosecution, by no means unimportant. He told you that it was I who ordered the men to load with ball at the Chocke, a statement wholly unwarranted either by the depositions at the police or by any you have heard in this Court. You will, therefore, dismiss from your minds this gratuitous misrepresentation.

The evidence of the occurrence at Culna, with which the prosecutor would have closed his case, had he not been compelled, very reluctantly, to produce Captain Little and Dr. Cheek, must be too fresh in your memory to require much comment. It was that of persons under trial themselves, and implicated so deeply in the transaction, as to have the strongest possible motive for perverting the truth; or of sepoys in whom you cannot but have remarked a strong anxiety to rid themselves of the consequences of a misconception of orders, which had proved so disastrous, and threatened them with heavy responsibility. There is no other way of accounting for the labyrinth of contradictions in which their statements have involved the case. As to the evidence of Ensign Maclean, there is really nothing in it that can affect me. My plan of proceeding, which I openly and repeatedly expresed at Culna, was to take the offenders and transmit them to Hooghly and Burdwan for tial, to do so by means of the Civil power if possible, but if that should fail, to hand the matter over to Captain Little and his detachment. The circumstances of the case fully warranted my calling out the military, but they were called in more to overawe resistance than for any active purpose. The expression deposed to by Ensign Maclean of taking the prisoners dead or alive, had reference only to the case of resistance which you have heard that we all anticipated, and which, as his lordships, I doubt not, will tell you would have justified me in proceeding even

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to extremeties. That my intention was to resort to military force only on the event of resistance, must be clear from the fact which you will already have inferred from Dr. Cheek's deposition, and which will be fully confirmed that when the firing unfortunately commenced, the darogah was in the very act of stepping into a boat to summon the party to surrender. A few minutes later, and he would himself have been exposed to the fire of the troops. But what say the other English gentlemen, who were present on the occasion, and whose production as witnesses was extracted with so much difficulty. Their statements, I submit, entirely exonerate me from this charge. I will not detain you with commenting on their evidence or on that of Mr. Alexander, which remains to be heard. I leave it to yourself to give it the weight it deserves. I am sensible that it may appear to you gentlemen of the jury, that the object in view might have been effected without the employment of military; but I beg you to observe, that such is not the opinion of Captain Little and it would have been highly culpable in me to expose my authority to the hazard of a repulse. But, in truth, the question is not whether the actual state of matters at Culna required the interference of the military, but whether the nature of my information was such as to warrant my resort to a measure so much against my inclination. That information will be fully before you. It will be for you to pronounce your judgment upon it. On that information I was bound to act by the laws and regulations which I was appointed to administer.

It is hardly necessary for me, after Captain Little and Dr. Cheek's evidence, to disclaim having myself either fired or ordered others to fire. The imputed cry of "Maro" "Mars," proceeding from my lips, is equally destitute of reasonable or consistent testemony to support it. My conduct and expressions both before and after the transaction will, I should hope, convince you of the utter falsehood of the allegation. One word, and I have done. If anything in my conduct on this occasion or in any act of my previous life has led you, gentlemen of the jury to believe for one moment, that I could be capable of anything so wanton, so reckless, and so un-English, as to have proceeded to the river side with a deliberate intent to direct a military fire upon a sleeping crowd, I am content to be delivered over to every penalty the law can inflict for such an outrage on humanity.

The record of conviction of Pertaub Chund was then put in and read; by which it appeared that in 1836, Aluck Shah *alias* Pertaub Chund, had been convicted of assembling men in arms and setting at defiance the constituted authorities, and sentenced to six months' imprisonment, and to find sureties to keep the peace for one year.

An order of Goverenment in the form of a letter to Mr. Ogilvy in June 1837, approving his conduct towards Pertaub, and directing care to be taken that no disturbance should arise.

Luckeynarain Ghose, the Foujdarry sheristadar of Burdwan, was called to prove the purwannahs issued by the Magistrate, Mr. Ogilvy, and the reports received at Burdwan from the darogah and nazir of Culna. The official seal of the thannah was appended to all the reports: unusual despatch had been employed in forwarding the purwannahs relating to Pertaub, expresses having been used instead of the regular dawk.

Captain John Colfield Harrington, examined by Mr. Morton.—I am deputy political agent to the Governor-General for the S. W. frontier, I have been in this district about three years. On the 26th of April last, I wrote a circular to the Magistrates of Burdwan and Bancoorah and other adjoining districts, inclosing a copy of a letter written to Captain Wilkinson the Governor-General's political agent (letters put in and proved.) This was in consequence of the apprehension of a man called Ram Bux Tewarry, who was carrying several letters from Pertaub Chund to the

wealthy zemindars of the districts in question. I remember Pertaub Chund making his appearance in my district about three years since with a large assemblage of followers. He had been a faqueer and was known by some as Aluck Shah. This may mean "invisible king." He made himself known to me as the claimant of the Rajah of Burdwan. The whole district was in a considerable state of agitation and excitement. I think this has been very much the case since, and there would be much ground for alarm, if he made his appearance in those parts. It was shortly after his first appearance in my district that he was arrested for the disturbance at Bancoorah.

Robert Barlow, examined by Mr. Prinsep.—I am judge of the zillah of Burdwan. I remember Mr. Ogilvy going from thence to Culna. I know he received two or three Persian reports before he started. I saw Captain *Harrington's* letter in Mr. Ogilvy's hand then. We had a conversation at the time. He is my subordinate officer. I do not know that the coversation was official. Mr. Shaw, the Assistant Magistrate was there. I advised the military to be called in when we went. I gave him one of my pistols, and the other to Dr. Cheek. I think they are quite new pistols. I received the pistol back from Mr. Ogilvy, loaded. There was a strong feeling prevailing in the district concerning Pertaub, I have known Mr. Ogilvy since last February. I should certainly not say that he was reckless of human life!

Maryrick Arthur Goffin Shaw, examined by Mr. Morton.—I was Assistant Magistrate at Burdwan last April and May. I have since been Officiating Magistrate, I remember seeing Captain *Harrington's* letter in Mr. Ogilvy's hands, on Monday the 30th of April. Dr. Cheek came in afterwards. I know that it was in consequence of this letter that Mr. Ogilvy determined upon going to Culna.

The letter of Captain Harrington to Mr. Ogilvy, with the inclosed communication from the former (a very strong letter) relating to the probable intentions of Pertaub Chund, derived chiefly from intercepted letters to zemindars and others, was put in and read. Captain Harrington's opinion seemed to be that there was something like a widely extended plot in embryo, to support the claims of Pertaub. Also a letter from Mr. F. C. Smith to Mr. Ogilvy, giving directions to the latter.

The purwannahs of the Magistrates and the reports of the darogah were tendered. The latter were objected to. After some argument the learned judge overruled the objection, considering that the Magistrate was justified in acting on the reports *prima facie*. The objection taken, was, that there was nothing to show that these *were* the reports of the darogah, and that, on the contrary, it was proved that he could neither read nor write. On the other hand, it was admitted, that these reports were not evidence of the real state of the country, or even of the darogah's belief on the subject; but that the Magistrate was *nevertheless justified prima facie* in acting upon them, whether true or not, as a constable is justified in acting upon a forged warrant, if he acts *bona fide*. Mr. Clarke also objected to some of the purwannahs being read, and not the whole. He said that several were kept back, and that some three or four had been carefully picked out, to support an untrue presumption that resistance had been offered to the authorities. Mr. Prinsep said that this was the first time he had ever heard so extraordinary an objection, especially in the case of a prosecution for felony. Could it be pretended that the prisoner was not at liberty to select whatever portions be considered material to his case? Much expense had been incurred in getting the numerous documents which had been put in, translated, and if the prosecutors considered any others essential to their case, let them get them translated, and put them in themselves. Sir J. Grant said that he could not see any objection whatever to the counsel for the defence selecting such as they

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might deem material to their own case. These purwannahs did not constitute an entire record, but were separate documents. His lordship added, that in a prosecution for felony, he should not hesitate to direct any document to be translated, at the time, if it should happen to be necessary, by the interpreter in court.

These purwannahs were to disperse the assemblage, and if this was resisted, to arrest Pertaub. The reports set forth a history of the different events, and the last return informed the Magistrate that the dispersion could not be affected without his presence, and that there was great danger of armed resistance and consequent affrays and bloodshed.

Assaud Ally, nazir, examined by Mr. Morton.—I am the Fourjdarry nazir of Burdwan. On the 29th of April last, I was ordered by the Magistrate, Mr. Ogilvy to proceed to Culna with a purwannah. The purwannah directed me to disperse the assembly, and to arrest Pertaub, and take him to Hooghly. I went accordingly. I went on board his budgerow one day about noon and shewed the purwannah. He did not disperse any of his men. I made a report accordingly to the Magistrate. I received two Persian letters from Pertaub, one the same evening, and another the next morning. I did not send these to the Magistrate until the 10th or 11th of May. My report was written and sent before these letters came to me. I thought it was a mere pretence, and that Pertaub did not really intend to obey the Magitrate's orders. I afterwards sent the darogah on board, but I did not again go myself. I remained on the bank of the river. I saw the Mrgistrate on the following night, about midnight at Culna. I went with him to Mr. Alexander's house. From that we went to the *choke*. There were some troops. I heard the captain give the order to load. They afterwards formed in lines on the bank of the river. I heard the captain give an order to fire a musket in the air. At that time I saw the darogah just stepping into a boat. The Magistrate and others had called out to the boats in the river, but they did not obey. After the order to fire in the air, I heard no other order given. Immediately afterwards two guns were fired, and then there was a firing "pop, pop," all down the line. I was standing about eighteen or twenty paces from Mr. Ogilvy. I was on a high bank, and could see him plainly, all the time. I was close to the captain. Mr. Ogilvy never cried out "maro." He did not fire off his pistol, nor did he give any order whatever to fire. When the bugle was sounded, the firing ceased.

Cross-examined by Mr. Clarke.—I saw Pertaub once about the middle of the day. He had asked me to return in the evening. I came to the bank of the river. Pertaub's people objected to our going on board with our arms. I am the darogah's superior officer. Before I received the Persian letter, I knew that Pertaub had seen Mr. Shaw. The night after, when I saw the Magistrate. I gave him a summary of the letters I had received, and he said that he should arrest him because he had often acted disobediently. No message was sent to Pertaub after the receipt of the letters until the firing, when the Rajah jumped into the river. Just before the firing, I heard every one cry out "They are running away." The Magistrate may have joined in this. The captain gave the order to fire in the air after this. I saw some men swimming before a gun was fired.

Alfred Alexander, examined by Mr. Prinsep.—I have resided at Culna ten years. I am catechist to the church missionary society. Pertaub came to Culna in April, and remained until the 2nd of May. I was resident there during his stay. When he made his entry, there was a concourse of some 7,000 persons. The mission bungalow is on a high bank about 200 yards from the river. There was an unusual assemblage and stir at the time of Pertaub's stay; people used to come daily and return daily from and to various parts. I heard an occasional firing, and beating

of drums. There were arms among them, sticks, and shields, and swords on their shoulders. They were coming towards Culna from the direction of Santipore. I consider that there was much ground for alarm. I have communicated with Mr. Ogilvy on the subject. I have written to him (A letter shewn, and proved,) in the end of last March. I only knew him a public servant, not personally. This was in answer to a note from him to me (note produced.) Before I wrote it, I saw a concourse of people abovementioned pass the mission-house; and, in consequence of this, I wrote. I received a letter from Dr. Cheek on the night of the 1st of May, and this I answered. This was partly from what I heard from the Nazir, and partly from my own observation. On the night of the 1st of May, I saw Mr. Ogilvy at Culna, also Dr. Cheek, Captain Little, and Ensign Maclean. The darogah and nazir were at my house that night. I heard Mr. Ogilvy say that he would take Pertaub with his police, if he could, and if not, he would apply to Captain Little to take him by force. I accompanied them in the morning to the *choke* at the instance of Dr. Cheek. I went thence to the river side Dr. Cheek and myself remained on the left away from the sepoys. After the drawing out in lines, we five were never all together, I could see the Magistrate, with a pistol in his hand: he was beckoning to the boats, and I heard a shouting, but I could not distinguish what I saw a boat putting off, with the darogah. The boats in the river were twenty or thirty yards from the edge. I heard a single shot fired, and the ball dropped a head of a small boat instantly after two other shots, and then in a few seconds the fire ran down the line. I heard the bugle sound to the left of Dr. Cheek. I saw Mr. Ogilvy presently afterwards. He said "there had been firing, and he was very sorry that a shot had been fired, he had given no order." I think all the other European, were there, including Captain Little certainly. I saw a pistol in Mr. Ogilvy's hand. I did not see him fire At the mission-house the Magistrate laid the pistol on my desk. It was a new double-barrelled pistol. I took it up and looked at it, with a view to put it in the desk out of harm's way. I took out the ramrod, and found both the barrels loaded. I put my finger in both barrels and found them perfectly clean. I admired the finish of the interior. I have once been a military man, in the artillery. I did not, nor did Dr. Cheek, take up a musket in the morning.

Cross-examined by Mr. Leith. It was about two hours after the firing that I saw the pistol on my desk. I cannot say that I saw him lay it down. The width of the river was perhaps 100 yards or more. Dr. Cheek, may have seen or not the darogah in the boat. I am certain that when the first gun was fired, the darogah was in the boat, at least, ten yards from the shore. He may have been nearly half way. I am not speaking of exact measurement, he was on his way. Mine is the only European house at Culna gunge. There is another Euroean house at old Culna, belonging to a Mr. Maclean, an indigo planter, who I believe is now at sea.

This closed the case for the defence, Sir J. P. Grant was about to sum up, but the jury were too exhausted to attend further that night, and an adjournment was found to be indispensible. The Court adjourned accordingly at half past seven o'clock, P. M.

FIFTH DAY, FRIDAY, AUGUST 17, 1838.

The Court met this morning at 10 o'clock.

Two letters were read, one from Mr. Alexander to Mr. Ogilvy, the other from Mr. Alexander to Dr. Cheek, describing the state of Culna, and the proceedings of Pertaub Chund, in parading about the place with numerous armed men. Some other documents were also read, which it was intended last night to have put into the hands of the jury, without reading them in Court, as the gentlemen of the jury

appeared at that time so much exhausted, and it was desirable to close the case as quickly as possible; but this morning Sir. J. Grant said, that the same reason could not now be given, and it was more regular to read all the documents that were to be put in.

Sir John Grant commenced summing up at half past ten o'clock. His lordship began by observing, that he was anxious to make his address, occupy as short a time as possible, but, considering the length to which his notes of the evidence extended (two manuscript books) he might possibly trespass upon their attention at greater length than he at present anticipated. His Lordship then proceeded to say, that he should first direct their attention to the most important portion of the case, the death and the cause of the death of the individual mentioned in the indictment to have been killed at Culna. Much of fictitious and extraneous matter had been mixed up with the real case before the Court, arising on the one hand from a desire on the part of the prosecution to shew, that a person calling himself Pertaub Chand, the claimant of the raj of Burdwan, had endeavoured in a peaceable and legal manner only to make good his claim, and a desire on the other side, to meet this case so set up, by evidence of his imposture and illegal intentions and conduct. In this case, the court and jury had really nothing to do with the rightful or wrongful claim of this person. The main question was, whether the death arose from the firing, and whether the firing took place by the orders of the prisoner. The former point is clear. (The learned judge then commended on the evidence of Bheek Sing, and Ensign Maclean.) It seemed to be immaterial, whether the words "dead or alive" were or were not coupled with the contingency or "attempting to escape"; because the order to kill, in the mere event of an offender (guilty of *misdemeanour* merely) *running away and attempting to escape*, would have been illegal, and if acted upon, it might have been murder. But, if the order was intended to to be acted upon, only in the event of *resistance*, this would have been legal and justifiable. (His lordship then commented upon the evidence of Dr. Cheek, with respect to the instructions given by Mr. Ogilvy to Captain Little, and this he said was important, as shewing Mr. Ogiloy's intention of first resorting to the Civil force.) There was no doubt, that the military force was there by the order of the prisoner, and for the purpose of dispersing the concourse and arresting the person called Pertaub. Now, it might be altogether unimportant, whether that purpose was lawful or unlawful: because, even if it was unlawful, the prisoner would not be answerable for the consequences not contemplated, and which he did not authorise. If the guns were fired without the express request or participation of the prisoner, he could not be answerable under any circumstances for a result not contemplated by him. (As to the lawfulness of the Magistrate's acting on the reports of his police officers, his lordship referred to regulation IX of 1807, section 4, which expressly directs the Magistrate to act thereon.) Considering the powers vested in the nazir and darogah it was even immaterial to this point, whether their reports were true or false. If false, those officers would be amenable to severe punishment, but the warrant of the magistrate, acting *bona-fide* upon the report, was nevertheless legal and good. His lordship then said, that he should confine the rest of his remarks and comments on evidences, to the question whether the prisoner was a participator in the offence, by actual firing, or ordering, aiding, abetting, or encouraging any one to fire. (The learned judge here took occasion to observe, that no doubt the grand jury had conscientiously performed their duty, but it appeared to him to have been done in a very extraordinary manner; for, if there had been *any crime at all*, he was at a loss to know how it could be anything else

than *murder*.) His lordship then commented at great length upon the evidence of the sepoys, reading the greater part in detail. As to the evidence of the man, called Baboo Tewarry, he observed, that the matters sworn to by him were of such a striking character, that if untrue, the misstatement could not possibly have been by *mistake*, but must have been gross and wilful *perjury*. In England and most other countries, if there appeared to be a wilful falsehood in a material part of a witness's testimony, the rest was considered tainted, and altogether unworthy of belief; but in this country, unfortunately, so lax were the notions of the natives concerning veracity and sincerity, that if this rule were acted upon, it would often be impossible to arrive at any conclusion whatever. It was, however, quite beyond all doubt, that the whole testimony of this witness was utterly absurd and incredible. His lordship then pointed out some discrepancies and contradictions in the evidence of each of the other sepoys and native non-commissioned officers, and also showed, that some parts were in direct opposition to their own statements respectively upon the examination at the police office. It was impossible to help suggesting an obvious reason, which might influence the evidence of the native soldiers, viz., their apprehension that their unwarranted conduct (if it were so) in firing without orders, might subject themselves to punishment for breach of military discipline. Sir J. Grant's own opinion was, that the first two guns ordered to be fired in the air, were the cause of the unfortunate result, and that this order (he was bound to say so) was most ill-judged and mistaken. If the jury were of this opinion, it was clear, that although some blame might attach, there was nothing whatever, to involve the prisoner in *criminality*; he was not even a party to the order which appeared to have been unfortunately misapprehended. The learned judge then commented on the evidence of Captain Little, which altogether supported the presumption, that the fatal firing was purely accidental, and he was sure, the jury would pause before they cast any imputation upon the statement or the conduct, or the motives of an English officer. (His lordship then offered to read over the evidence of the other Europeans, but the foreman of the jury, Mr. Cameron, said, that it was unnecessary, as the jurors were agreed upon their verdict. This was at half past twelve o'clock.)

The jury then immediately returned a verdict of *not guilty*.

Mr. Clarke then rose and said, that as the verdict of acquittal had been pronounced on the merits of the case, and not from any flaw in the evidence, he should certainly not offer any evidence in support of the two other indictment for manslaughter.

Sir. J. P. Grant, said that the learned council therein exercise a sound discretion.

Mr Ogilvy, was then arraigned on the two other indictments, for the manslaughter of Serajee manjee, and Gobind Sing, at Culna, on the 2nd of May, and a verdict of *not guilty* was recorded in each.

Sir. J. P. Grant, then addressed Mr. Ogilvy to the following effect:

"Mr. Ogilvy, your conduct has been the subject of a very long and very careful investigation in this court. Your trial exhibits the instance of a gentleman of high station, arraigned for the imputed crime of unlawfully causing the death of a very humble individual, and I hope the fairness and justice of the administration of the laws will be thus made apparent to all the inhabitants of this country. In the mode of trial, and the measure of justice which you have received, no distinction has been made between you and the meanest of her Majesty's subjects. I fully concur in the sentiment contained in your own written defence, that, although the ordeal which you have gone through, is most painful, it is matter of congratu-

lation that you have had an opportunity of subjecting your conduct to the scrutiny of this public investigation. You now stand quite free from all charge and imputation, and if there have been any little error of judgment, you are still most clearly proved to have had no participation whatever in the act itself, which resulted so fatally, and to have been actuated throughout by no feeling or motive, other than becomes a gentleman.

His lordship then thanked the gentlemen of the jury for their patient attention throughout this protracted investigation.

The verdict of acquittal, and the judicious and feeling address pronounced by his lordship, appeared to produce universal satisfaction throughout the crowded Court:—

TO THE OTHER CHARGES.

BEFORE SIR EDWARD RYAN, KT., CHIEF JUSTICE.

Judgment.

"James Balfour Ogilvy—It is my painful duty to pass the sentence of this Court upon you. You have been found guilty of false imprisonment of the prosecutor Mr. Shaw. (The learned judge then recapitulated the facts of the case). The Darogah a most important witness, as to the acts of Shaw and the necessity for his restraint, was not called by either party,—why, I cannot understand, as he certainly could have given the best evidence as to what took place, and whether Mr. Shaw was party to any disturbance of breach of the peace. But I must say that there is not a tittle of evidence to show that Mr. Shaw was guilty of sedition, or any other offence whatever. It is in evidence, that he knew only of one *purwanah* being served on Protab at Culna, and, I must say, that his conduct on that occasion appears to me to have been judicious, regular and proper. He made his client write a letter offering submission to the order of the authorities, and it was delivered to the Nazir that night. Mr. Shaw so far from committing any improper acts, gave the best advice as to how to get rid of the assembly, by telling the Nazir to point out who of the followers should be sent away. The treatment of Mr. Shaw after his arrest was certainly exceedingly harsh, and is without justification either in law or in fact, and he was made to undergo by you most unwarrantable and most unjustifiable imprisonment. The Court will not however cause you to suffer imprisonment; because, we must suppose, that you have been actuated by motives arising from errroneous information and a mistaken zeal, but ardent wish to preserve peace and good order in your district. (The letters from Mr. Alexander the missionary and Captain Harrington were then read.) It is probable that these letters excited considerable alarm in your mind, and after the importunate affray in the morning you may have imagined it necessary to arrest Mr. Shaw, but those letters should have led you to enquire into matters, before you proceeded to act as you have acted. It appears that there was no disturbance whatever when the affray took place nor had there been any for a considerable time before the event took place. But the Court believing, that you acted upon erroneous information, although rashly and unjustifiably, will give you in your sentence the benefit of that consideration, which they on that account extend towards you. Such conduct cannot, however, be lightly passed over. Liberty is dear to all; you have deprived the prosecutor of his with very unnecessary and very considerable harshness. It will also serve as a warning to others who may at any future time be placed in situations similar in nature of yours. The sentence of the Court therefore is, that you pay a fine to the Queen of two thousand Rupees, upon payment of which, you be discharged."

J. B. OGILVY'S EXPLANATION JUSTIFYING HIS CONDUCT.

"The lawyers of Calcutta are the natural and inveterate enemies of our service, the whole of the profession was up in arms against me. They knew not of course the rights of the story, for that was an official secret. Besides this all those Zemindars who were to join the pretender, and all who have lent him money (and he had contrived to raise enormous) have also deeply vowed to be revenged upon me, for all their schemes and hopes of all plunder have been defeated and these are the party who pay the expense of the proceedings against me, whilst the lawyers conduct them, some of them positively acting without a fee contrary to all professional rule and precedent, the only reward they seek is to crush me if possible. It was by no means sufficient with them to villify me in the papers as man was never before abused, but they would hang me if they could; and accordingly are trying to prove me guilty of murder.

The public have been taught to believe that I fired upon unresisting sleeping innocents. The papers have it that I am suspended but that is not the case. I am required to attend in Calcutta pending this business, but I continue to draw my salary: and the Deputy Governor tells me that Government express no opinion one way or the other. I understand that but for a blunder the case would have been dropped long ago. To show you the spirit that is working against me I must tell you that I had notices of actions for damages in fourteen civil actions with which I was threatened; one case of false imprisonment, one of contempt of Court, and one of murder. They tried also to get up a case of bribery and corruption, swearing I had taken a consideration of three lacs of Rupees; and I was also accused of subornation of perjury. Finding they could make out no case they have given up all but two—contempt of the Supreme Court, and murder; and these they only persevere in to keep up the odium against me and the agitation while the trial of Mr. Shaw and the pretender is pending. My being in difficulty gives great weight to them as it cows all the witnesses who have to give evidence for the prosecution.

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